

Deliberation 2020-019 of January 30, 2020Commission Nationale de l'Informatique et des LibertésNature of the deliberation:
OpinionLegal status: In force Date of publication on Légifrance: Tuesday May 05, 2020NOR: CNIX2010962Deliberation n°
2020-019 of January 30, 2020 providing an opinion on a draft decree relating to the procedures for making available the offer
of games and game data (request for opinion no. 19020879)The National Commission for Computing and Liberties,
Seizure by the Minister for Action and Public Accounts of a request for an opinion concerning a draft decree relating to the
terms and conditions for making available the offer of games and game data;
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) 2016/679 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;
Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms;
Having regard to Law No. 2010-476 of May 12, 2010 relating to the opening up to competition and the regulation of the online
gambling sector;
Having regard to law n° 2019-486 of May 22, 2019 relating to the growth and transformation of companies, in particular its
article 137;
Having regard to Ordinance No. 2019-1015 of October 2, 2019 reforming the regulation of gambling and games of chance;
Having regard to Decree No. 2010-509 of May 18, 2010 relating to the obligations imposed on licensed online gaming or
betting operators with a view to the control of gaming data by the Online Gaming Regulatory Authority;
Considering the decree n° 2010-518 of May 19, 2010 relating to the provision of the offer of games and bets by the licensed
operators of online games or bets;
Considering the decree n° 2019-536 of May 29, 2019 taken for the application of the law n° 78-17 of January 6, 1978 relating
to data processing, files and freedoms;
Having regard to deliberation no. 2019-116 of September 12, 2019 providing an opinion on a draft ordinance reforming the
regulation of gambling and games of chance; After hearing Mr. Christian KERT, auditor in his report, and Mrs. Nacima
BELKACEM, Government Commissioner, in his observations, Issues the following opinion: money and chance, on which the

CNIL had issued an opinion by deliberation n° 2019-116 of September 12, 2019.

The draft decree modifies two decrees which had been issued pursuant to law no. 2010-476 of May 12, 2010 relating to the opening up to competition and the regulation of the online gambling sector: - Decree No. 2010-518 of May 19, 2010 relating to the implementation of the gaming and betting offer by licensed online gaming or betting operators, which determined the procedures for opening, managing and closing of the player account created on the online gaming and betting sites of approved operators;

- Decree No. 2010-509 of 18 May 2010 relating to the obligations imposed on licensed operators of online games or bets with a view to the control of game data by the Regulatory Authority for Online Games, which provided for the control of game data by ARJEL. The draft decree also modifies, in its title III, certain provisions of the Sports Code relating to the processing of personal data concerning sports betting. The draft decree calls for the following observations on the part of the Commission. On the provision of the gaming and betting offer by licensed online gaming or betting operators and by operators holding exclusive rights (Title 1) The draft decree extends the provisions already provided for, since they no longer only concern online gaming and betting offers, but also gaming offers from operators holding exclusive rights.

The draft order on which the Commission issued an opinion introduced the obligation to create an identified player account for games on physical terminals without human intermediation, i.e. on gaming terminals in physical distribution network. However, Ordinance No. 2019-1015 of October 2, 2019 seems to extend the obligation to the physical distribution network, without specifying the medium used.

In this respect, the Commission notes that the draft decree could usefully clarify, when it refers to the player account in the physical distribution network (Articles 2, 5 and 15 in particular), that this only concerns physical terminals without human or gaming terminals, and not any type of games in a physical distribution network. On the information notices to be brought to the attention of players: As a preliminary point, the Commission notes that Article 1 of the draft decree indicates that the regulations on the general conditions of the offer of games or bets must include the information required pursuant to article 104 of the law of January 6, 1978 referred to above.

However, the processing implemented in the context of the game offer falls under Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data, of a personal nature and on the free movement of such data, and repealing Directive 95/46/EC (GDPR), and not

Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal penalties, and free movement of this data, of which article 104 of the data protection act is one of the transpositions.

In general, the Commission recalls that pursuant to Article 12 of the GDPR, the information notices provided for in Articles 13 and 14 which must be brought to the attention of the players concerned, must be concise, transparent, understandable, easily accessible and expressed in clear and simple terms. On verifications of gambling bans by the gambling operator Article 23 of the draft decree amends former article 22 of decree no. that such a verification by the gaming operator must take place not at least every eight days but every seven days and will be done through the information system of the ANJ.

The terms of this verification, as well as the technical terms of connection to the information system of the National Gaming Authority, will be determined by the ANJ.

In the absence of precision at this stage on these methods, the Commission recalls that the verification operations constitute a processing of personal data subject to the General Data Protection Regulations and to Law No. 78-17 as amended of 6 January 1978. On the mechanisms for combating excessive or pathological gambling The draft decree retains the self-limitation mechanism provided for by the 2010 decree, which consists of asking the player who opens an account to regulate his gambling capacity by setting the maximum total amount of deposits and stakes that he may make over a period of seven days. He adds that the player can modify these limits at any time by an easily accessible device, without however specifying which one.

Article 17 extends this self-limitation mechanism to online circle games and provides that the operator permanently displays a counter of the actual playing time already achieved over the period in question. It warns the player that this limit will soon be reached by displaying an alert message when 75% of the playing time has elapsed or at the latest 30 minutes before the deadline, then again ten minutes before that. -this.

This extension of the self-limitation mechanism involves collecting data relating to the time spent by a person gambling, where the mechanisms provided for by the 2010 decree only aimed for a limit in terms of financial amount. However, such collection seems proportionate with regard to the legitimate purpose of transparency and warning pursued.

Finally, the draft decree maintains in its article 19 the existence of a self-exclusion procedure consisting of the operator

permanently offering the player the possibility of requesting by an easily accessible device his exclusion from the game, without however specify which one. It also modifies the period of exclusion which previously could not be less than seven days and can now not be less than twenty-four hours nor more than twelve months.

These provisions do not call for any specific comments from the Commission. On the identification of excessive or pathological gamblers The draft decree refers in its article 24 to the existence of a new system for identifying and supporting gamblers excessive or pathological by gaming operators.

However, this device is not the subject of any description and it is referred to the framework guidelines of the ANJ approved by order of the Minister responsible for health for the determination of the criteria and methods of implementation of the device.

The draft decree provides that the system will be based on the observation and cross-analysis of quantitative and qualitative indicators, linked in particular to:- gambling behavior and deposits;

- the use of self-limitation and self-exclusion mechanisms;

- exchanges between the player and the operator or the retailer;

- to any fact brought to the attention of the operator likely to indicate that the player suffers from gambling addiction problems.

data, some of which are potentially sensitive in that they could reveal data relating to the health of individuals, as pathological gamblers.

In addition, the processing of the aforementioned elements could lead to decision-making based on the profiling of players and producing legal effects concerning them or significantly affecting them in a similar way.

In this respect, the Commission points out that the possibility of taking exclusively automated decisions, without a human being intervening in the process, must be authorized by Union law or the law of the Member State to which the person responsible of the processing is subject and which also provides for appropriate measures to safeguard the rights and freedoms and legitimate interests of the data subject, in accordance with Article 22 of the GDPR. To date, it does not appear that positive law authorizes the use of such automated decisions. Moreover, such decisions cannot be based on so-called sensitive data referred to in Article 9.1 of the GDPR, unless Articles 9.2.a) or 9.2.g) of the GDPR were to apply and appropriate measures to safeguarding the rights and freedoms and legitimate interests of the data subject are in place.

As it stands, however, the text submitted for the Commission's opinion does not provide for such exclusively automated decision-making.

In general, the Commission notes that the processing induced by this device meets three criteria that are sources of risk for the persons concerned, namely: (i) potential profiling of persons, (ii) in order to detect pathological states, (iii) and which could lead to a decision that significantly affects the players.

Therefore, this processing is likely to create a high risk for the rights and freedoms of natural persons and must be the subject of an impact analysis on the protection of personal data, prior to its implementation, in accordance with Article 35 of the GDPR.

In this respect, the Commission notes that the criteria and procedures for implementing the mechanism for identifying and supporting excessive or pathological gamblers will be determined by future framework guidelines of the ANJ, approved by order of the Minister responsible for health.

These framework guidelines could include guarantees to limit the impact of the processing carried out by the operators and guide them in carrying out their analysis. On the provision of data to the ANJ by licensed gaming or betting operators online and by operators holding exclusive rights (Title II) The draft decree provides, as did decree no. gaming operations and to generate and transmit reports on gaming activity to the ANJ) and specifies the categories of data made available to the new ANJ as well as their retention period. Commission draws the Ministry's attention to the benefit of specifying in the draft decree the retention period for data from inactive player accounts, in order to prevent these are kept in an unlimited manner in the absence of closure by the player or the operator concerned. On the processing of personal data relating to sports betting (Title III): On the processing implemented by the delegated sports federations

Ordinance No. 2019-1015 of October 2, 2019 amends Article L. 131-16-1 of the Sports Code which now provides that delegated sports federations may, in addition to questioning the ANJ for gaming operations registered by an authorized operator, question the FDJ for other gaming operations in the context of which it identifies and verifies the identity of punters and ensures that the latter have complied with their ban on betting.

The processing of personal data implemented by the FDJ

The draft decree adds a new article R. 131-38-1 to the sports code which authorizes, for the application of articles L. 131-16 and L. 131-16-1 of the sports code, the FDJ to implement automated processing of personal data concerning punters and bets made on the sports bets it organises.

The purpose of this processing is to control the ban on betting requested by a delegated sports federation pursuant to Article L. 131-16-1 of the Sports Code. Such a purpose appears determined, explicit and legitimate.

Data relating to players and their bets are processed when these: verification of his identity in accordance with the provisions of I of Article L. 561-5 of the Monetary and Financial Code;

- are linked to sums wagered or won exceeding the threshold calculated per game receipt mentioned in Article L. 561-13 of the Monetary and Financial Code;

- relate to prizes or winnings for which the FDJ proceeds to group payment and by means of bank money, when their cumulative total exceeds the threshold mentioned in article 10 of the decree of October 17, 2019 referred to above;

- have been detected as an atypical participant by the FDJ, marked and monitored by the latter as part of the implementation, in accordance with the provisions of article 10 of the aforementioned decree of October 17, 2019, of measures aimed at preventing the risks of exploitation of gambling covered by this draft decree and for fraudulent purposes and to combat money laundering. They also relate to: - the identity of the players (surname, use, first names, date and place of birth);

- their stakes (date and time of bets taken, amount of sums wagered, betting formulas played, competition support for bets, losses or gains, date and time of payment of any winnings). The data mentioned above appears adequate and relevant with regard to the intended purposes, insofar as they will allow the delegated federations to check that the players in the competitions which are the subject of a betting ban have indeed complied with this ban.

Data reconciliations for the controls requested by the delegated federations

The draft decree provides that, as the former ARJEL and now the ANJ did, the FDJ carries out the checks requested by a delegated federation by matching the file transmitted by it with the automated data processing that it implements. concerning players and their bets in accordance with article R. 131-38-1.

The draft decree also specifies that these requests for controls sent by the delegated federations may relate to the taking of sports bets made in the last twenty-four months.

Rights of persons

The rights of access and rectification of the persons concerned, which were exercised until now only with regard to the former ARJEL which became ANJ, can now also be exercised with the data protection officer of the FDJ in the conditions provided for in Articles 49 and 50 of Law No. 78-17 of January 6, 1978.

The right of opposition provided for in Article 56 of the law does not apply, insofar as the processing implemented by the ANJ or the FDJ results from legal obligations.

Such elements are in order and do not call for any observations on the part of the Commission.

However, the Commission recalls that the persons concerned by the processing envisaged must also be informed of the processing carried out with regard to their personal data in accordance with Article 48 of Law No. 78-17 of January 6, 1978 and in Article 13 of the GDPR. On the processing implemented by the organizers of sports events or competitions Law n° 2015-1541 of November 27, 2015 aimed at protecting high-level and professional athletes and securing their legal situation and social introduced a new article L. 333-1-4 in the sports code.

Under the terms of this provision, the organizer of a sporting event or competition referred to in Article L. 331-5, which prohibits its players from placing bets directly or through intermediaries on bets based on this sporting event or competition, may, with a view to penalizing breaches of this prohibition, ask ARJEL for access to personal information relating to gaming operations recorded by an approved gaming operator.

This is the same system as that seen previously for the delegated federations, which allows the organizers of these events or competitions to verify that the players subject to a ban on betting on them have actually abstained.

Ordinance No. 2019-1015 of October 2, 2019 amended Article L. 333-1-4 of the Sports Code, which now provides that the organizers of competitions or sporting events may, in addition to questioning the new ANJ (formerly ARJEL) for online gaming operations recorded by an approved operator, question the FDJ for other gaming operations in the context of which it identifies and verifies the identity of punters.

The contributions of the draft decree within the sports code are therefore the result of the extension of the scope of application of article L. 333-1-4 of the sports code to the FDJ. They simply transpose the provisions which concerned the former ARJEL and now ANJ to the FDJ.

Since the modifications made by the draft decree within Articles R. 333-5 and following of the Sports Code being the transposition of the modifications made for the delegated federations, the Commission reiterates the observations made above on the processing implemented by the delegated federations. The President,

M.-L. Denis