

Deliberation 2020-082 of July 16, 2020Commission Nationale de l'Informatique et des LibertésNature of the deliberation:

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n° 2020-082 of July 16, 2020 providing an opinion on a draft order relating to the installation of a surveillance system in certain

fishing vessels flying the French flag - Request for an opinion n° 20006170La Commission nationale de l'informatique et des

libertés,Request by the Minister for agriculture and food of a request for an opinion on a draft decree authorizing the

implementation of a remote electronic monitoring system to monitor compliance with the obligation to land catches by certain

fishing vessels flying the French flag; 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) 1380/2013 of the European Parliament and of the Council of 11 December 2013 relating to

the common fisheries policy;

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 (General Data Protection Regulation or GDPR);

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 competent authorities for the purposes of prevention and

detection of criminal offences, investigation and prosecution thereof or the execution of criminal penalties, and on the free

movement of such data, and repealing Council Framework Decision 2008/977/JHA;

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

articles 31-I and 89-I;

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 the request and its additions; Having heard Mr. Alexandre LINDEN, commissioner, in his report, and Mrs.

Nacima BELKACEM, government commissioner, in her observations, Issues the following opinion: Regulation (EU) n°

1380/2013 of the European Parliament and of the Council of 11 December 2013 on the common fisheries policy (CFP)

provides for an obligation to land catches which aims to put an end to the practice of throwing unwanted catches of fish back

into the sea. Article 15 of the aforementioned Regulation provides that All catches of species subject to catch limits and, in the

Mediterranean, those subject to minimum sizes defined in Annex III to Regulation (EC) No 1967/2006, taken in fishing activities in Union waters or by Union fishing vessels outside Union waters in waters outside the sovereignty or jurisdiction of third countries, in fisheries and the geographical areas listed above near, are brought back and kept on board the fishing vessels, then registered, landed and charged against the quotas if necessary, except when they are used as live bait (...). The ministry considers that insofar as the treatment is mainly implemented for the purpose of researching and recording criminal and administrative offences, it falls within the scope of the aforementioned directive (EU) 2016/680 of 27 April 2016 and must be examined in the light of the provisions of articles 87 et seq. of the amended law of January 6, 1978. It considers that insofar as no sensitive data within the meaning of article 6 of the amended law of January 6, 1978 is intended to be collected in the processing, it must be the subject of an order issued after a reasoned and published opinion of the Commission, in accordance with the provisions of article 89 of the aforementioned law of January 6, 1978. It is in this context that the Commission was seized by the Minister agriculture and food for an opinion on a draft order relating to the installation of a surveillance system in certain fishing vessels flying the French flag (geolocation of the vessel, measurement sensors and video surveillance) to control the obligation landing of catches. On the principle of experimentation The Commission notes first of all that this draft order is, according to the Ministry, part of an experiment. This experiment, lasting two years, would concern the installation of monitoring devices for the purpose of controlling the obligation to land catches, and would concern four fishing vessels flying the French flag which have volunteered. however, the draft decree makes no mention of the experimental nature of these monitoring devices, which only appears in the referral letter from the ministry, which subsequently confirmed this point. It recalls that an experiment must have a limited duration and be the subject of a precise evaluation, which must make it possible to determine the follow-up to be made. The order also does not define the scope of the experiment by limiting it to certain vessels and does not mention volunteering. Consequently, the Commission considers that the draft order submitted to it does not concern a device of experimentation but the creation of a lasting processing of personal data, which also presents a particular sensitivity. It asks that the draft order be substantially revised to expressly specify the experimental nature of this system, the characteristics of the experiment (scope, duration, etc.) and the requirement for evaluation at the end of the period, prior to a possible sustainability of the system. In this respect, the Commission takes note of the ministry's commitment to modify the draft order on all of these points. On the applicable regulations The Commission points out that for a processing operation to be included in the scope of Directive No. 2016/680 of April 27, 2016, known as the Police-Justice Directive, data

processing must meet two cumulative conditions. It must, on the one hand, pursue one of the purposes mentioned in its article 1 relating to the prevention and detection of criminal offences, as well as investigations and prosecutions in this area, and on the other hand, be implemented by a competent authority within the meaning of this directive. With regard to the criterion of competent authority, the Commission notes that according to Article 3.7 of this directive, this term means an authority to which powers for the prevention and detection of criminal offences, as well as investigations and prosecutions in this area. powers of the judicial police, this criterion appears to be fulfilled. With regard to the criterion of the purpose pursued by the processing, the Commission notes that if the ministry specifies that the purpose of the surveillance system is to do document any offending behavior, which may lead to administrative sanctions (...) and criminal criminal consequences (...), article 2 of the draft decree specifies that the purpose pursued by the processing is to check compliance with the obligation to land catches by certain fishing vessels flying the French flag, this landing obligation being defined in Article 15 of the (EU) regulation relating to the aforementioned CFP. The State considered in its decision no. 424216 of July 19, 2019 that the processing of personal data falls, depending on its purpose, within the scope of the regulation of April 27, 2016 or that of the directive of the same day. Even though, as stated in point 8, the disputed processing has several purposes, including the prevention, detection and repression of criminal offences, its purpose is to enable, by combating fraud and tax evasion, improving compliance with their tax obligations by French and American taxpayers. It follows that it falls within the scope of the regulation of April 27, 2016 and not that of the directive of the same day. offenses, it appears that the main purpose pursued by the processing is compliance with the obligation to land catches. Also, the Commission considers that the aforementioned processing does not fall within the scope of the provisions of Title III of the Data Protection Act et Libertés transposing the so-called Police-Justice directive, but that of the GDPR. With regard to its characteristics, the Commission also notes that this processing complies with the formalism imposed by Article 31 of the aforementioned law. On this point, the Commission notes the commitment of the Ministry to modify the legal regime applicable in the draft of decree. On the condition of lawfulness The referral to the Ministry indicates that the processing is necessary for the performance of a task in the public interest or in the exercise of public authority vested in the controller in accordance with the provisions of Article 6.1°.e) of the GDPR. However, the Commission notes that Article 12 of the draft decree excludes the right to object on the grounds that the processing would be subject to a legal obligation. On this point, the Commission specifies that if the landing obligation is a legal obligation imposed by the Regulation (EU) relating to the CFP, the installation of remote monitoring devices is only one of the means recommended by

the Regulation to achieve this purpose. Consequently, it considers that the processing cannot be based on a legal obligation but falls within the mission of public interest entrusted to the Ministry. On this point, the Commission takes note of the commitment of the Ministry to consider that the processing falls within the mission of public interest with which it is invested, and not under a legal obligation. On the purpose The obligation to land catches referred to in Article 15 of Regulation (EU) on the the CFP aims to prohibit fishermen from throwing accidental catches back into the sea (catch below the regulatory size, quota already reached, protected species, etc.) by deducting these catches from the authorized catch quota when they are landed. It follows from the Regulation (EU) relating to the CFP that compliance with the landing obligation for the purposes in particular of avoiding the overexploitation of living aquatic resources constitutes a legitimate purpose. Article 15-13 of the aforementioned Regulation provides that (...) Member States shall ensure that they have detailed and precise documentation concerning all fishing trips as well as appropriate capacities and means, such as observers, closed circuit television and other means. In doing so, Member States respect the principle of effectiveness and proportionality.

It is on this basis that the Ministry wishes to install video surveillance, geolocation and measurement sensors on certain fishing vessels flying the French flag. The Commission nevertheless points out that, if it is necessary to ensure the protection of environment, which is a principle with constitutional value, it is up to the legislator and the Government to ensure that the measures taken to this effect respect the essential balance that exists with the other fundamental rights and freedoms, in particular the right to respect for privacy. While in the field of video surveillance, the Commission mainly accepts the installation of cameras in the workplace only for the purposes of the security of goods and persons, it notes that the processing in question is likely to make it possible to monitor the activity of fishermen on these vessels in a general way, beyond the mere compliance with landing obligations, and to place them under surveillance p permanent. While the Commission takes note of the Ministry's observations concerning the insufficiency of the existing checks (at sea, on landing and documentary) to ensure full compliance with the landing obligation, it notes that the devices installed to compensate for this lack of resources have resulted in an increase in the use of surveillance technologies. Also, it asks that, in the implementation of the experiment, appropriate guarantees be taken by the ministry so that the infringement of the rights of employees is limited to what is strictly necessary. The cameras must be oriented so as to film only the ship's sorting line and to avoid filming, as much as possible, the faces of the employees. On this point, the Commission takes note of the ministry's commitment to implement appropriate guarantees for the purpose of limiting infringements of the rights and freedoms of employees caused by the installation of video

surveillance cameras. In any event, the Commission draws the attention of the Ministry to the fact that such surveillance devices cannot become the systematic solution within the framework of the control of the various obligations weighing on individuals and professionals. On the data processed Article 3 of the draft decree provides that information relating to:

- images from closed circuit television cameras;
- data recorded by the measurement sensors;
- positions of the ship via a satellite geolocation system. According to the ministry, the installation of a video surveillance system coupled with a geolocation device as well as measurement sensors would make it possible to ensure compliance with the landing obligation throughout the vessel's fishing activity.

Furthermore, the Commission takes note of the Ministry's observations on the absence of any biometric or sound recording device.

Although the Commission considers that the preservation of fishery resources is a legitimate objective, it nevertheless questions the effectiveness of such a system insofar as:

- it can be difficult to distinguish among the catches rejected those authorized to be rejected;
- the visualization of rejected catches can, moreover, be made even more difficult due to the climatic conditions in the open sea. The measurement of the effectiveness of the system with regard to the infringements of the rights and freedoms generated contributing to the assessment of the of the system, the Commission considers that an evaluation of the system at the end of the experiment will be necessary, in support of an experiment report. It recalls that the possible sustainability of the system will require the enactment of a new decree which will have to be submitted to it. On this occasion, it asks for a precise evaluation of the experiment to be sent to it. It invites the ministry to design and set up, from the start of the experiment, the indicators which will make it possible to evaluate the effectiveness of the system, in accordance with good practices in the field of public policy experimentation. On this point, the Commission takes note of the ministry's commitments to design indicators in order to evaluate the system and to send the results of the experiment to the Commission. It also takes note of the ministry's commitment to enact, in the event of the system being made permanent, a new decree and to submit it to it for its opinion. On the recipients and access to data Article 4 of the draft decree provides that will have access to the information contained in the processing, according to their respective attributions and the need to know:

- the director of maritime fisheries and aquaculture within the ministry;

- the staff of the fisheries control office of the maritime fisheries and aquaculture directorate of the ministry;
- the control officers mentioned in article R. 941-1 of the rural and sea fishing code;
- the authorized personnel of private service providers holding an analysis and viewing contract. not directly affected by the

use of this data. This is why the draft decree has been amended to add the mention subject to individual authorization conditions set by the Director of Maritime Fisheries and Aquaculture. In view of the large number of people covered by this article, the Commission considers nevertheless that this addition is insufficient and requires that only the services and agents mentioned in article R. 941-1 of the aforementioned code appear in the draft order and who are likely to have effective access to the recordings. On this point, the Commission notes the ministry's commitment to modify the draft decree so that it only includes as having access to the recordings the services and agents mentioned in article R. 941-1 of the rural and maritime fishing code. Commission also notes that Article 6 of the draft decree provides that the data mentioned in Article 3 are made accessible on board, on request, to the control officers designated by Article R. 941-1 of the Rural Code and sea fishing me. Asked about the conditions of access to the recorded data, the ministry indicated that the data will be recorded in a closed circuit and then systematically transmitted to the private service providers who hold the market for analysis and viewing during disembarkation, thus making them recipients of this data. . The latter will take cognizance of the recordings they have selected beforehand and will only transmit to the authorities mentioned in Article 4 of the draft decree the contentious recordings. not clearly from the draft decree which only seems to provide for accessors to the processing, and not recipients. In addition, if article 4 of the draft decree allows certain categories of people to have access to the images, article 6 seems to restrict direct access only to the control officers designated by article R. 941 -1 of the rural and maritime fishing code, and on the double condition of being done on request, and on board ships. In this respect, the Commission takes note of the ministry's commitment to clarify this point in the draft order. Subject to the previous observations, the Commission considers that these recipients have a legitimate interest in knowing this data. On information and the rights of individuals Article 8 of the draft order provides that staff will be informed of the purpose of the processing put in place as well as the procedure to be followed to request access to the visual recordings concerning it. In this respect, the Commission recalls that in accordance with the provisions of Article 13 of the GDPR and Article L. 1222 -4 of the labor code, employees of must be individually informed of all the information provided by the first of these texts. In addition, article 9 of the draft order provides that appropriate signage will indicate to personnel the location of the various monitoring devices .On this point, the Commission considers that the

information panels, in sufficient number in relation to the filmed area, must be placed in a visible manner and contain at least the following information: the purpose of the processing, the name of the data controller, the retention period of the images, the possibility of filing a complaint with the CNIL, as well as the procedure to be followed by the employee to request access to the recordings concerning him. These panels must also include pictograms in order to facilitate the immediate understanding of the information by the employees. The rights of access and rectification will be exercised with the Department of Maritime Fisheries and Aquaculture of the Ministry of Agriculture, and food. The Commission notes that Article 12 of the draft decree provides that the right to object does not apply to this processing. It notes that this draft article refers to former Article 38 of the Data Protection Act to set aside this right. On this point, the Commission recalls that the right of opposition can only be waived under the conditions provided for by Article 23 of the GDPR and Article 56 of the Data Protection Act. Failing this, the persons concerned will have a right of opposition in accordance with the provisions of Article 21 of the GDPR. opposition pursuant to Article 56 of the Law of January 6, 1978 and Article 23 of the GDPR. Subject to the previous observations, the Commission considers that these methods of informing and exercising the rights of individuals are satisfactory. On the retention period Article 5 of the draft decree provides that data relating to images captured by video surveillance devices installed on fishing vessels are retained for:

- a duration not exceeding forty-five days when they are recorded on vessels making trips with an average duration of between zero and fifteen days;
- a period not exceeding sixty days when they are recorded on vessels carrying out trips of an average duration greater than fifteen days. At the end of this period, the recordings are automatically erased. In the event of litigation, the images will be extracted from the device and kept for the duration of the legal or administrative procedure. by the particular context, the time spent at sea possibly exceeding fifteen days. It notes in this respect that the private service providers responsible for viewing and analyzing will only be able to read the recordings once the ships have landed and that viewing the recordings is a long task. also that the data recorded by the measurement sensors as well as those relating to the positions of the vessel are kept for a period not exceeding three years. On this point, the Commission notes that this period corresponds to that provided for by the implementing regulation (EU) No. 404/2011 of April 8, 2011 laying down detailed rules for the application of Regulation (EC) 1224/2009 of November 20, 2009 establishing a Community control system to ensure compliance with the rules of the common fisheries policy and amended by the (EU) Regulation on the CFP, in terms of satellite tracking systems. On

subcontractors The Commission notes that private service providers responsible for viewing and analysis have not yet been chosen by the Ministry of Agriculture and Food. On this point, it recalls that they must meet all the conditions set by Article 28 of the GDPR and that subcontracting relations must be governed by a contract under the conditions of this same article. On security measures The Commission takes note of the clarifications provided by the Ministry regarding the storage of data on hard disks encrypted with an appropriate, in accordance with the recommendations of the National Agency for Information Systems Security and recalls that this involves the use of algorithms and key management procedures in accordance with Appendix B1 of the general security reference system (RGS). In this respect, it recommends that an integrity check be carried out on the stored data, for example by calculating a fingerprint of the data with a hash function in accordance with appendix B1 of the RGS. The Commission recalls, moreover, that measures must be put in place to ensure the confidentiality of the data which may be contained in the storage media in the event of breakdown, disposal, or reuse, either by carrying out a secure erasure carried out with a specific software, or by physically destroying the media. It notes that the transfers will be made via a physical medium or electronically (3G/4G/5G, wifi, GSM or satellite), and recalls, in this respect, that whatever the transfer mode chosen, the encryption and integrity control measures must comply with the recommendations of appendix B1 of the RGS. an antivirus and subject to regular updates and security patches. It notes the implementation of a password policy in accordance with deliberation no. a recommendation relating to passwords. Concerning physical access control to the premises of the service provider responsible for data analysis, the Commission recommends that measures be taken to prevent any intrusion, such as zoning, accompanying visitors, wearing badges, locking doors, etc. The Commission notes that a daily backup procedure will be put in place. It recalls that, to be effective, these backups must be tested regularly in order to verify their integrity and they must be stored in a place guaranteeing their security and availability. The Commission takes note of the implementation of logging and recalls that it must make it possible to keep a trace of data consultation, creation and modification operations, with a recommended duration of six months. The other security measures do not call for any observations on the part of the Commission.

M. L. Denis