

Deliberation 2018-321 of October 4, 2018 National Commission for Computing and Liberties Nature of the deliberation:

Opinion Legal status: In force Date of publication on Légifrance: Tuesday October 23, 2018 Deliberation No. 2018-321 of October 4, 2018 providing an opinion on a draft Order modifying the Order of October 13, 2004 creating the automated control system (Request for opinion no. opinion on a draft decree amending the decree of October 13, 2004 creating the automated control system; Having regard to Convention No. 108 of the Council of Europe for the protection of individuals with regard to automatic processing of data of a personal nature; Having regard to Directive 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal penalties, and on the free movement of such data and repealing Framework Decision 2008/977/JHA of Council; Having regard to the Highway Code, in particular its articles L. 121-3, L. 130-9, L. 225-1 to L. 225-9, L. 330-2 to L. 330-5, R. 121 -6, R. 130-8, R. 130-11 and R. 330-1 to R. 330-5; Having regard to the Code of Criminal Procedure, in particular Articles 537 and 529 to 530-3; Having regard to Law No. 2016-1547 of November 18, 2016 on the modernization of justice in the 21st century; Having regard to law n° 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms, in particular its article 70-3 and its chapter XIII; Having regard to decree n° 2016-1955 of December 28, 2016 implementing the provisions of articles L. 121-3 and L. 130-9 of the Highway Code; Having regard to decree n° 2011-348 of March 29, 2011 as amended establishing the National Agency for the automated processing of i nfractions; Having regard to the modified decree of October 13, 2004 creating the automated control system; Having regard to deliberation no. amending the decree of October 13, 2004 creating the automated control system; Having regard to deliberation no. 04-076 of October 5, 2004 providing an opinion on a draft interministerial decree creating a device called an automated control system aimed at automating the observation, management and repression of certain traffic offences; On the proposal of Mr Jean-François CARREZ, Commissioner, and after having heard the observations of Mrs Nacima BELKACEM, Government Commissioner, Issues the following opinion: The Commission has been referral by the Minister of the Interior to a request for an opinion relating to a draft decree amending the decree of October 13, 2004 creating the automated control system. It makes it possible to note, by means of approved automatic control devices, certain violations of the highway code, to identify the holder of the registration certificate of the vehicle concerned and to manage the operations relating to the corresponding notices of contravention. This processing is implemented by the National Processing Center (CNT), managed by the National Agency for the Automated

Processing of Offenses (ANTAI) and has also been examined on several occasions by the Commission. that the draft decree aims to take into account the amendments to the Highway Code and the Code of Criminal Procedure, introduced by Law No. 2016-1547 of November 18, 2016 on the modernization of justice in the 21st century, aimed at improving the repression of certain traffic offences. The draft decree widens, on the one hand, the scope of the existing processing by modifying the categories of data collected in order to allow the recording of data relating to the parentage of the holder of the driving license and provides, on the other hand, that the processing in question will be the subject of new interconnections, links or reconciliations with other processing. n or the prosecution of criminal offences, this must therefore be the subject of an order, taken after reasoned opinion and published by the Commission in accordance with the provisions of article 70-3 of the law of January 6, 1978 amended. On the purposes of the processing Article 1 of the draft decree sets out the purposes pursued by the processing, namely: to record, by means of approved automatic control devices, the offenses provided for in Article R. 130-11 of the Highway Code; record and store the data collected by the reporting officer by means of electronic devices on the occasion of the observation of fines and offenses relating to road traffic; manage the operations relating to the identification of vehicle drivers, perpetrators of the offenses referred to in 1° and 2°; managing the operations necessary for the processing of the offenses referred to in 1° and 2° with a view to the notification of notices of contravention and amen notices of tort lump sum; manage the responses of persons to whom a notice of contravention or a notice of tort lump sum fine is notified; facilitate the management of the payment of consignments, the recovery of fines and the reimbursement of consignments by the competent services; to facilitate the establishment of withdrawals of points by the service responsible for managing the national driving license system; to ensure the transmission of files relating to the offenses referred to in 1° and 2° to the competent courts and judicial authorities; to manage the fleet of electronic recording devices. The Commission notes that the planned modifications, without substantially modifying the provisions resulting from Article 1 of the decree of 13 October 2004 referred to above, aim to take account of the widening of the offenses that can be detected by means of the automated control. In practice, the scope of these offenses is that provided for in Article R. 130-11 of the Highway Code, created by Decree No. 2016-1955 of December 28, 2016 implementing the provisions of Articles L. 121-3 and L. 130-9 of the highway code. The proposed amendments are also intended to take into account the application of the fixed fine procedure for the offenses of lack of driving license and lack of insurance, recorded by an electronic report and introduced by article 36 of the aforementioned law of 18 November 2016. The Commission considers that these modifications do not call for observation and that the

purposes pursued by the processing are determined, explicit and legitimate, in accordance with article 6-2° of the law of 6 January 1978 amended. On the data collected Articles 2 and 3 of the draft decree modify the data that may be collected and processed within the automated control system. The Commission notes that the draft decree provides for the collection of data relating to the filiation of the driver of the vehicle, i.e. the surname and first name of the driver's parents. It specifies that these data will be communicated on a declarative basis by the driver, during the checks carried out by the agents or officers of the judicial police. The ministry justifies the collection of such data, on the one hand, in order to allow any risk of homonymy, during the consultation of the TAJ by the agents or officers of the judicial police during checks. It indicates, on the other hand, that the filiation data must make it possible to meet the needs of the courts in the event of a dispute which would be deemed admissible. The recording of parentage data in the file sent to the public prosecutor's office by the CNT must thus allow foreign defendants, in the event of referral to the criminal court, or those born abroad, to request an extract from the criminal record, without having to request an investigation service to collect these elements. Without calling into question the justifications provided by the Ministry, the Commission considers that the systematic collection of data relating to the driver's parentage is not necessary. It takes note of the ministry's commitment to modify the draft decree in order to specify that this data will only be recorded in the processing when this information is necessary for the identification of the person, in particular in the event of homonymy, or when the person was born abroad. On new interconnections, links or reconciliations Article 5 of the decree of October 13, 2004 provides that the automated control system may be subject to interconnections, links or reconciliations with other processing operations, namely : the national registration file; the national driving license system; automated processing for monitoring the recovery of fines and monetary convictions; processing relating to the management of rental contracts and rented vehicles implemented by companies whose business is the rental of vehicles; processing relating to the management of the vehicle fleet implemented by companies or establishments making vehicles available to their employees or customers; the electronic payment systems for fines implemented by the competent departments of the Directorate General of Public Finances; automated processing relating to the processing of orders and judgments before the police courts called Minos; the central management application; the vehicle registration system; the satellite database of stolen vehicles; the automatic processing file for undelivered postal items, called Alliage . Article 4 of the draft order provides for new interconnections. On a preliminary basis, the Commission notes that the draft order amends the eighth paragraph of article 5 of the aforementioned 2004 order so that it is made expressly mention the name of the processing

covered by these provisions, i.e. MINOS processing. In any event, this interconnection is not subject to change and, according to the ministry, makes it easier for the police courts to manage criminal offense files by sending a digitized file. place, the draft decree plans to interconnect the automated control system with the automated processing relating to legal proceedings within the high courts called Cassiopée, in order to simplify the transmission of data collected by the CNT to the courts, following the finding of an offense by electronic report. With regard to the extension of the scope of offenses likely to be found in criminal matters, the Commission notes that this interconnection meets the operational need for the transmission of this data. In practice, an inter-application link (via flows webservices) between these two treatments must allow the secure sending of the CNT to Cassiopée, of the data necessary for the supply of the procedure (civil status and address of the defendant, nature, date and place of the offense and reporting service) . These flows will also make it possible to transmit to the competent public prosecutor's office, via Cassiopée processing, the constituent elements of the procedure (in particular the report of the finding, the exchange of letters between the competent public prosecutor's office hosted at the CNT and the respondent in the framework of the examination of the admissibility of the challenge, the documents possibly transmitted by the defendant in support of his challenge). The Ministry indicates that these elements will also be transmitted via the CNT, by means of secure flows, in the application called digitization of criminal proceedings (NPP), insofar as Cassiopée only deals with the management of proceedings, excluding of any attachments. The Commission takes note of the ministry's commitment to amend the draft order so that this connection is expressly provided for. The Commission considers that the interconnection envisaged by the ministry is justified, in that it pursues an objective of management and more effective transmission of the documents constituting the procedure to the competent services and courts. Secondly, an interconnection between the automated control system and the processing of criminal records (TAJ) is planned, in order to take into account the flat rate offenses of lack of driving license and lack of insurance, introduced by the aforementioned law of 18 November 2016. The Commission notes that paragraph 2 of article 495-17 of the code of criminal procedure specifies that the procedure for the fixed fine is not applicable if the offense was committed by a minor or in a state of legal recidivism or if several offences, at least one of which cannot give rise to a fixed fine silence, were observed simultaneously. It thus acknowledges that the interconnection with the TAJ has the sole purpose of assessing the state of recidivism of the driver, for the same offence. In practice, a computer flow between these processing operations will feed the TAJ, from the finding of an offense of a criminal nature, noted by electronic report. The data thus transmitted relates to the offense (nature, date, place and time), to the

accused (civil status data), to the vehicle concerned by the offence, as well as to the reporting agent. Commission takes note that this interconnection should contribute to improving the operational development of the criminal fixed fine. Furthermore, it notes that consultation of the TAJ by the agents and soldiers of the services and units authorized to access it, within the limits provided for in Articles 230-10 and R. 40-28 of the Code of Criminal Procedure (CPP), must allow to guide the outcome of the control procedures, within the framework of the purposes listed in article 1 of the decree of October 13, 2004, in the light of the background of the drivers of the vehicles by determining, in particular, whether the latter have been charged with an identical offence. It points out that the consultation of the TAJ by these people takes place independently of the use, by these same people, of the automated control system. In view of these elements, the Commission considers that the Ministry has justified this connection. It recalls that it is up to the ministry to ensure, where applicable, that the reporting formalities applicable to the processing concerned by the aforementioned interconnections are updated. On the rights of the persons concerned Article 5 of the draft decree provides that the rights of information, access, rectification and erasure provided for in articles 70-18 to 70-20 of the law of January 6, 1978, are exercised directly with the CNT. The Commission notes that people will be informed by means of statements appearing in the notices of contravention and the notices of tort fixed fines, as well as on the signature screens of the report terminals electronic, used by agents and officers of the judicial police. It also acknowledges that in the event of rectification or deletion of data previously transmitted to the processing operations linked to the automated control system, an automatic update, and failing this, by post or courier, is implemented. apply to treatment nt projected. The Commission recalls that, if the provisions of Directive 2016/680 of 27 April 2016 referred to above as transposed into domestic law, do not mention the possibility for data subjects to oppose the processing implemented, the States Member States retain, in any event, the possibility of providing more extensive safeguards than those established in that 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 on the protection of personal data and whose application to the processing operations covered by the aforementioned directive is not 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 in Article 7 of the draft decree is

proportionate with regard to the purpose pursued by the planned processing, namely the establishment of infringements. 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 data subjects. On the other characteristics of the processing , consultation, communication and deletion of personal data and information are subject to recording including the identifier of the author, the date, time and nature of the operation. This information is kept for one year. It considers that the retention of these data for a period of one year does not call for any particular observation. unchanged. On security measures With regard to existing or planned measures, the infrastructure of the automated control system has been analyzed by the Commission on various occasions. The Commission notes that currently all flows are encrypted from end to end. bout , using cryptographic mechanisms compliant with Annex B1 of the RGS. All the operations related to these flows are traced at the database level and at the business level over a rolling year. The same applies to technical traces. The data is then decrypted and stored in the database, so that the personal data associated with a file is only displayed to persons entitled to know about it. Furthermore, the Commission notes that the authentication of users on their workstations is carried out via strong authentication by smart card. on qualified RGS certificates. These security measures are such as to guarantee a limited risk of data breaches. It recalls that the anonymization process should prevent all parties from isolating an individual in a data set, linking two records in a data set (or two separate data sets) and deduce information. Taking into account the existing or planned measures, and the improvements envisaged, the residual risks are considered acceptable with regard to the stakes of the processing. The Commission encourages the implementation of encryption of data stored in the database and of backups, as well as the use of pseudonymisation. Subject to the preceding observations, the Commission considers that the security measures described by the data controller comply with the security requirement provided for by article 70-13 of the amended law of January 6, 1978. It recalls, however, that this obligation requires the updating of security measures with regard to the regular reassessment of risks. recalls that specific attention should be paid to the reassessment of security measures as part of the imperative update of the impact analysis. For the PresidentThe Deputy Vice-PresidentMarie-France Mazars