

Deliberation 2022-036 of March 24, 2022 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

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2022-036 of March 24, 2022 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 of civil security actors (request opinion n° 22003992) The National Commission for Data Processing and Liberties, Request by the Minister of the Interior of a request for an opinion concerning a draft decree implementing Articles L. 242-1 et seq. internal security code and relating to the implementation of image processing by means of capture devices installed on aircraft of civil security actors; Having regard to regulation (EU) 2016/679 of the Parliament and 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 (GDPR); Law No. 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms, in particular II and IV of its article 31; On the proposal of Mrs. Sophie LAMBREMON, commissioner, and after having heard the observations of Mr. Benjamin TOUZANNE, Government Commissioner, Issues the following opinion: of January 6, 1978 amended, by the Ministry of the Interior, of a draft decree implementing Articles L. 242-1 and following of the Internal Security Code (CSI) and relating to the implementation of treatment of images using capture devices installed on aircraft of the actors of civil security. Articles L. 242-1 and following of the CSI were created by article 47 of law n° 2021-646 of May 25, 2021 for global security preserving freedoms, on which the Commission has already issued an opinion (deliberation no. 2021-011 of January 26, 2021) and were amended by article 15 of law no. 2022-52 of January 24, 2022 relating to criminal liability and internal security. Article L. 242-6 of the CSI determines the conditions under which firefighters and marine firefighters, State service personnel and unit soldiers assigned on a permanent basis to civil security missions or members approved civil security associations within the meaning of Article L. 725-1, are authorized to implement anywhere, including in private places when strictly necessary, processing of personal data from cameras installed on aircraft. Indeed, in accordance with the aforementioned law n° 2022-52 of January 24, 2022, marine firefighters are now among the civil security actors authorized to use such devices (article L. 242-6 of the CSI). In addition, these provisions no longer apply only to aircraft with no one on board, but to all aircraft. Book II of the same code and the use of the data collected must be specified by a Conseil d'Etat decree, taken after a reasoned and published opinion from the Commission. The Commission has already had the opportunity to comment on this draft decree in its deliberation No. 2022-006 of January 13, 2022 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 personal data processing from cameras installed on aircraft traveling without anyone on board. While it notes that this amending referral aims to take into account the observations made as well as the modifications introduced by the aforementioned law n° 2022-52 of January 24, 2022, it regrets that some of its observations have not been followed (in particular that inviting the ministry to clarify the draft decree in order to indicate that the "buyers" will be authorized to record the data provided for by the draft article R. 242-2 of the CSI and to consult them). The draft decree submitted to it for opinion constitutes a "single regulatory act", within the meaning of IV of article 31 of the amended law of January 6, 1978, allowing firefighters and seamen-firefighters, staff of State services and military units assigned on a permanent basis to civil security missions, members of approved civil security associations within the meaning of Article L. 725-1 of the CSI to implement anywhere, including in private places when strictly necessary, processing of personal data from cameras installed on aircraft. The Commission recalls that, in its opinion of 13 January 2022, it noted that, acting from As approved civil security associations within the meaning of Article L. 725-1 of the CSI, the Government considers that these planned processing operations will be implemented "on behalf of the State". Although it did not question this analysis, it considered, in any event, that it would be up to the Council of State to assess this point. On the general conditions for implementing the system In the first place, draft article R. 242-1 of the CSI has been supplemented in order to cover all airborne cameras, whether installed on drones or on other aircraft, captive (wired drones) or not (aircraft, helicopter, microlight). The Commission notes that this widening of the scope of the airborne cameras concerned results from the terms of Article L. 242-1 of the CSI as amended by the aforementioned law n° 2022-52 of January 24, 2022, which had the consequence of no longer limiting the aircraft concerned to those "circulating without anyone on board". The Commission notes that although this change is the result of a legislative change, it considerably increases the number of aircraft concerned. In addition, with regard to the purposes pursued by the processing, it considers that the systems must be implemented in such a way as to minimize the invasion of privacy, in particular by not filming the people on board the aircraft. In this respect, it takes note that the device envisaged by the ministry is to install the cameras under the devices, so that the crew and the operator will not be in the field of the camera. Secondly, in accordance with what is provided for by article L. 242-6 of the CSI, draft article R. 242-1-I of the same code provides that firefighters and marine firefighters, personnel of the State and the soldiers of the units invested on a permanent basis with civil security missions or the members of approved civil security associations within the meaning of Article L. 725-1 may proceed in any place, by means of cameras installed on

aircraft, to the capture, recording and transmission of images for the stated purposes. In its opinion of January 13, 2022, the Commission recalled that processing may be carried out in private places and more particularly private homes, when the operational situation requires it, in case s impossibility of access, dangerous engagement for rescue, or insufficient other means and had invited the Government to specify in the draft decree that aircraft can only be sent to private places when this is strictly necessary for the objective of civil security pursued (namely the missions of prevention, protection and fight against civil security risks, protection of persons and property and emergency relief). Consequently, it welcomes that the draft decree has been supplemented in order to indicate that aircraft may be operated anywhere "including in private places when strictly necessary". Thirdly, the draft decree includes guarantees 2022-52 of January 24, 2022 mentioned above. , to indicate that the implementation of these t treatment cannot be permanent. On the other hand, modifications have also been made to draft article R. 242-2 of the CSI to specify that the images captured can be transmitted to the command post of the service, unit or of the association concerned and to the personnel involved in the conduct and execution of the intervention, who can view them in real time or delayed for the duration strictly necessary for the intervention. It is added that the cameras are equipped with technical devices to guarantee the integrity of the recordings until they are erased. These additions are intended to take into account the new wording of article L. 242-2 of the CSI, which does calls for no new observations. The Commission takes advantage of these additions to reaffirm the need to protect video streams, certainly in integrity, but also in confidentiality, as it had already underlined. On the data collected The draft article R. 242-2-I of the CSI lists the personal data and information that may be recorded in the processing, including "the surname, first name and title reference of the remote pilot, the officer in charge of aerial observation and investigation and the sensor operator as well as the registration number of the aircraft". The Commission welcomes this clarification of the data that can be collected. It notes that this category of data has been supplemented in order to provide for the collection of data from agents on board airplanes, helicopters and microlights. In view of the foregoing, the Commission considers that the data processed are adequate, relevant and not excessive with regard to the purposes pursued. On retention periods In order to take into account the modifications introduced in article L. 242-4 of the CSI, the draft article R. 242-4 of the same code now provides that the data and information is kept on a secure computer medium for a period of seven days from the end of the deployment of the device, and no longer for a period of thirty days from the day of their registration. It is specified that when the data has, within the period of seven days, been extracted or transmitted for the purposes of a judicial, administrative or disciplinary procedure, it is kept according to the rules specific to

each of these procedures by the authority which While the Commission welcomes these changes, it recalls that it considered that it would be desirable for the Ministry to encourage data controllers to encrypt the data and information stored in order to increase the general level of security and harmonize, at national level, the practices of each future data controller. On this point, it notes that the AIPD has been amended to this effect and that the need to put in place measures to guarantee an appropriate level of security will be mentioned in the employment doctrine. Under these conditions, the Commission considers that the data are kept for a period not exceeding that necessary with regard to 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 The draft article R. 242-6 of the CSI has been modified in order to specify the circumstances prohibiting the information of the persons concerned, by limiting these cases to "the urgency or the conditions of the rescue operation". with regard to the procedures for informing the public about the use of cameras installed on aircraft, the Commission notes that Article L. 242-3 of the CSI provides for individual information of the public, by any appropriate means, of the implementation airport devices image capture authorities and the responsible authority, except where circumstances prohibit it. This provision also indicates that general information for the public on the use of airborne image capture devices must be organized by the Minister of the Interior. 'prohibit' as mentioned in I of article R. 242-6 of the CSI is particularly broad and, consequently, welcomes the modifications made. It nevertheless invites the ministry to determine objective criteria making it possible to assess the circumstances referred to in the draft decree and which could be specified in an employment doctrine. On security measures The Commission has no new comments to make on security measures and maintains its general observations. President Marie-Laure DENIS