

Deliberation 2022-034 of March 17, 2022 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

Opinion Legal status: In force Date of publication on Légifrance: Tuesday April 26, 2022 NOR: CNIX2211328V Deliberation n° 2022-034 of March 17, 2022 providing an opinion on a draft decree amending Title IV of Book II of the Internal Security Code (request for opinion no. 22003558) The National Commission for Computing and Liberties,

Seizure by the Minister of the Interior of a request for an opinion concerning a draft decree amending Title IV of Book II of the Internal Security Code;

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

Considering the decision of the Constitutional Council n° 2021-817 DC of May 20, 2021;

Having heard the report of Mrs Sophie LAMBREMON, commissioner, and the observations of Mr Benjamin TOUZANNE, government commissioner, Issues the following opinion: The Commission has been seized, in accordance with article 33-II of the law of 6 January 1978 amended, by the Ministry of the Interior, of a corrective referral relating to a draft decree amending Title IV of Book II of the Internal Security Code (CSI) relating to individual cameras for police officers and the national gendarmerie. In its deliberation No. 2022-005 of January 20, 2022, the Commission has already had to rule on this draft decree; it regrets that some of its observations have not been taken into account at this stage, in particular that aimed at ensuring that the guarantee that there will be no automated links or interconnections with other data processing personal data be specified in the draft decree, as well as that aimed at ensuring that criteria taken from decision of the Constitutional Council no. 2021-817 of May 20, 2021 are mentioned in the draft decree defining the circumstances which prohibit the inform the persons concerned before the camera is triggered. It therefore reiterates those observations. by specifying that the integrity of recordings is guaranteed until they are erased and, on the other hand, by reducing the retention period for audiovisual recordings from six to one month. The draft amending decree has been supplemented on the two aforementioned points in order to take into account the entry into force of this law. The ministry also wished to provide details in order to clarify the operation of the "security" mode of the cameras. compatibility of the system adopted with article L. 241-1 of the CSIS With regard to the cameras in question, the Commission understands, in the light of all the information provided by the Ministry in the context of this referral and the previous one, that there will be three operating modes of the cameras: the "normal" mode which films, records, and continuously deletes the recording dating from more than thirty seconds, to keep in memory only the

last thirty seconds of buffer memory. A fixed green light signal characterizes this mode; the "camera activated" mode which films, records continuously, and keeps the recordings, including the thirty seconds of video recorded before this mode was triggered. In this mode, a light signal (two flashing red lights) and sound is activated. The recording therefore covers the entire period during which the light signal is visible, as well as the previous thirty seconds from the buffer memory; the "security" mode which films, records, and continuously deletes the recording dating back more than thirty seconds, and for which the light signal is off. The Ministry indicates that this mode is used in certain specific circumstances, in particular when it comes to deactivating sound or light elements that can alert an adversary and guide hostile fire. It emerges from these elements that the cameras, whatever the mode used, performs a temporary recording in a buffer of thirty seconds. It also shows that the camera cannot be deactivated, so that these three modes are the only possibilities offered to the agents (no possible extinction of the camera for example). In addition, in the event that, once the carrier agents have returned to their unit, the recordings are subsequently transferred to the dedicated storage station, the data retained will include the recording made when the camera is activated as well as the thirty seconds preceding this activation. On the other hand, if the camera was not activated during the intervention, no recording in the buffer memory will be kept or transferred to the storage station. As pointed out by the Government, this mode of operation of the cameras was already known to the Commission. It had in fact been noted during previous checks carried out by the CNIL services. The existence of a buffer memory and the fact that the thirty seconds preceding the activation of the camera are kept in the event of recording did not at the time give rise to observations or formal notice from the CNIL. Conscious of the fact that these previous exchanges did not make it possible to alert the Ministry to a possible difficulty on this subject, the college of the Commission can however, on examining the file submitted to it, only emphasize that it wonders about the compatibility of this mode of operation with article L. 241-1 of the CSI. The effect of the provisions of this article is that the recording by the cameras must not be permanent, that a visual signal must indicate that the camera is recording and that the triggering of the recording must be the subject of information of the persons filmed, unless the circumstances prohibit it. Although the device, as described below above, technically causes the camera to continuously record thirty seconds in a buffer memory, the Commission accepts, as the government maintains, that the provision of Article L. 241-1, which prohibits a camera individual carried by a policeman or gendarme records permanently, aims to prevent a recording of the entire duration of an intervention from being kept and consulted. Insofar as, in this case, the recording dating from more than thirty seconds is systematically deleted from the buffer memory, so that if an agent has not activated the

camera during his intervention, no recording will be consultable and that, if he has activated it, only a recording of the duration of activation increased by thirty seconds will be kept, the Commission accepts that the use of this buffer memory does not constitute a permanent recording within the meaning of Article L. 241-1 of the CSI. However, the Commission wonders about the conformity with article L. 241-1 of the CSI of the visual and vocal information which is provided to the persons filmed. Indeed, on the one hand, it is provided by article L. 241-1 of the CSI that "a specific visual signal indicates whether the camera is recording". The light signal used being different between the "camera activated" and "normal" modes, and non-existent in the "security" mode, it follows that, when the camera is activated, the recording of the thirty seconds preceding its activation is then kept. that, during this period, the light signal had indicated an absence of recording, or that there was no light signal (if you were in security mode). On the other hand, article L. 241-1 of the CSI provides that the triggering of the recording is subject to information of the persons filmed, unless the circumstances prohibit it. The Commission wonders about the compatibility of the planned system with this provision, clarified by the aforementioned decision of 20 May 2021, in which the Constitutional Council noted, on the one hand, that this information is given "when the registration and, on the other hand, that, if article L. 241-1 of the CSI allows that the triggering of the registration may, by exception, not be the subject of information to the persons concerned when " the circumstances prohibit it", these circumstances cover the only cases where this information is "made impossible for purely material reasons and independent of the reasons for the intervention". However, the Commission notes that the recording of the thirty seconds preceding the triggering of the camera is not the subject of concomitant information. While the government emphasizes that the oral information that will be given may specify that a recording of the previous thirty seconds will be kept, this information, in addition to the practical difficulties that its complexity could cause for officers during operations, comes, by definition, after that the recording has been triggered and completed. On the modification of the data retention period and on the integrity of the recordings The planned modifications, which aim to take into account Article 14 of Law No. 2022-052 of 24 January 2022 cited above, do not call for any comments from the Commission. The President Marie-Laure DENIS