

Deliberation 2019-028 of March 14, 2019 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Saturday March 30, 2019 NOR: CNIX1908585X Deliberation No. 2019-028 of March 14, 2019 providing an opinion on a draft decree extending the automated processing of personal data known as PARAFE to British nationals (request for opinion no. 19004098) The National Commission for Computing and Liberties, Request for opinion concerning a draft decree extending the automatic processing of personal data called PARAFE to British nationals; Having regard to Convention No. 108 of the Council of Europe for the protection of individuals with regard to automatic processing of personal data personnel; Having regard to Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 concerning a Union code relating to the French regime demarcation of borders by persons (Schengen Borders Code) 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; Having regard to Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of verifications in the relevant bases at the external borders; Having regard to the internal security code, in particular its articles R. 232-6 to R. 232-11; Having regard to law n ° 78-17 of January 6, 1978 modified relating to the , to files and freedoms, in particular its articles 27 and 30; Considering the decree n ° 2005-1309 of October 20, 2005 modified taken for the application of the law n ° 78-17 of January 6, 1978 relating to the computing, files and freedoms; Having regard to deliberation no. 2007-094 of May 3, 2007 p giving an opinion on a draft decree creating an automated processing of personal data relating to passengers at French airports crossing the external borders of the States parties to the Convention signed in Schengen on June 19, 1990; Having regard to deliberation no. 2010 -105 of April 15, 2010 providing an opinion on a draft decree amending decree no. 2007-1182 of August 3, 2007 creating an automated processing of personal data relating to passengers at French airports crossing the external borders of the States parties to the convention signed in Schengen on June 19, 1990; Having regard to deliberation no. 2016-012 of January 28, 2016 providing an opinion on a draft decree amending an automated processing of personal data called PARAFE; On the proposal of Mrs Sophie LAMBREMON, commissioner, and after having heard the observations of Mrs Nacima BELKACEM, government commissioner, Issues the following opinion: The Commission has been asked for an opinion by the Minister of the Interior on a draft decree in Council of State extending the automated processing of personal data called Rapid Automated Passage to External Borders (PARAFE) to British nationals. The PARAFE system, governed by Articles R.

232-6 to R. 232-11 of the of internal security, aims to improve and facilitate the implementation of border controls at the border crossing points manned by the French border guard services at the external borders of the Schengen area by allowing the passage of these borders in an automated way. Travelers eligible for the PARAFE system, and who so wish, can therefore use dedicated airlocks in order to satisfy the aforementioned checks from the automated reading of their passport and the verification of the associated biometric data (fingerprints or facial recognition) recorded when registering for the PARAFE program or when issuing this identity document. substantial measures which must surround the PARAFE system in order to ensure a high level of data protection for the persons concerned. It recalls in this regard that it considers legitimate the use of biometric recognition devices to ensure the identity of a person, since the biometric data is stored on a medium used by the person. exclusive, as is the case for the biometric passport. The Commission considers in this respect, as it has recalled in numerous deliberations, that the establishment and maintenance of a central biometric database can only be accepted insofar as imperative requirements in terms of security or public order justify it. It recalls in particular that the processing of data such as fingerprints, in a centralized form, generates more risks from the point of view of the protection of personal data, taking into account both the characteristics of the element of physical identification retained, the possible uses of this processing and the risks of serious breaches of privacy and individual freedoms resulting therefrom. It takes note of the changes envisaged by the Ministry aimed, in the long term, at abolishing the central database of fingerprints and requests, in any event, to be duly informed of the effective nature of this change. The Commission recalls that the impact assessment relating to data protection (DPIA) will have to be updated accordingly. These general elements recalled, the Commission notes that the modification envisaged by this draft decree aims to explicitly mention in the number of nationals of non-member states of the European Union (EU) eligible for the PARAFE scheme, British nationals, with regard to the forthcoming exit of the United Kingdom from the EU. It notes that the draft decree submitted to it will enter into force on the date of the withdrawal of the United Kingdom from the EU, without an agreement based on Article 50 of the Treaty on the Functioning of the European Union. The Commission considers that PARAFE processing, the purpose of which is to streamline police checks at the external borders, falls within the scope of Regulation (EU) 2016/679 of 27 April 2016 referred to above (hereinafter GDPR). Insofar as it is implemented on behalf of the State, acting in the exercise of its prerogatives of public power, and that it relates to biometric data necessary for the authentication or the control of the identity persons, its modification must be the subject of a decree in Council of State, in accordance with articles 27 and 30 of the law of January 6, 1978 modified. With regard to the legal basis of

the processing, the Commission observes that the Ministry intends to avail itself of the performance of a mission of public interest or relating to the exercise of the official authority vested in the controller, in accordance with article 6-1-e) of the GDPR.

As PARAFE processing is likely to create a high risk for the rights and freedoms of the persons concerned, it notes that a DPIA has been sent to it. On the extension of the eligible public to British nationals As a preliminary point, and with regard to the observations formulated relating to biometric devices, the Commission recalls that the widening of the public eligible for the device can in no way legitimize the maintenance of a central base, nor its massive extension, to the detriment of the use of biometric devices that are more protective of freedoms of the persons concerned. Article 1 of the draft decree provides for the possibility, for nationals of British nationality, of using the PARAFE system. The Commission notes that the airlocks are already used by these people and that this addition is only intended to frame the consequences of the United Kingdom's exit from the European Union, of which British citizens will no longer be nationals. The ministry specified that the possibility for British nationals to use the airlocks of the PARAFE system should make it possible to maintain reinforced controls at the borders without degrading their fluidity, in a context of a growing increase in world traffic. If direct access at the fingerprint gate is in theory possible for British citizens, it requires the possession of a passport or a national biometric identity card, subject to access by the French authorities to the chip containing the fingerprints . In this regard, the Commission notes that such access is currently not permitted for British nationals. Therefore, it notes that all British nationals will be required to enroll beforehand if they wish to use the fingerprint airlocks of the PARAFE device. It notes that they will nevertheless have the possibility of using the facial recognition airlocks. without prior registration, subject to holding a valid passport or national identity card, equipped with an optical reading strip. Subject to the elements previously recalled concerning the maintenance in a centralized database of biometric data, this extension does not call for any particular comments from the Commission. On the security measures The Commission considers that the security measures, which remain unchanged, comply with the security requirement provided for in Article 32 of the GDPR. However, it recalls that this obligation requires the updating of security measures with regard to the regular reassessment of risks. In this regard, she recalls that specific attention should be paid to the reassessment of security measures as part of the update of the impact assessment. The President M-L. DENIS