

Deliberation 2021-060 of May 20, 2021 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Friday March 18, 2022 NOR: CNIX2200794V Deliberation n° 2021-060 of May 20, 2021 providing an opinion on a draft decree on the creation of automated processing of personal data, each referred to as the "Ministerial PPST database" (request for opinion no. national security of a request for an opinion concerning a draft decree creating automated processing of personal data, each called "Ministerial PPST Base"; Considering the modified law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms, in particular II and IV of its article 31; After having heard the report of Mr. François PELLEGRINI, commissioner, and the comments by Mr Benjamin TOUZANNE, Government Commissioner, Issues the following opinion: The Commission has received a request for an opinion from the General Secretariat for Defense and National Security (SGDSN) concerning a draft decree (hereinafter the "draft decree") creating automated processing of personal data, each referred to as the "Ministerial PPST database" (hereinafter the "ministerial databases"). This processing is intended to contribute to the system for protecting the scientific and technical potential of the Nation (PPST), which is based on controlling access to strategic or sensitive knowledge, know-how and technologies housed in restricted regime zones (ZRR), in order to prevent the risk of capture or misappropriation of the latter. Article R. 413-5-1 of the Criminal Code provides more specifically that access to a ZRR in the context of studies, training, research or professional activities is subject to the authorization of the head of the department, establishment or company, after a favorable opinion from the minister responsible for exercising supervision. The implementation of the planned processing is intended to allow the centralization of the instruction respectively by the ministers responsible for energy, health, the economy, higher education and agriculture, of the requests for advice referred to them pursuant to the aforementioned article, by department heads e, establishment or company called upon to rule on a request for authorization to access a ZRR. access authorization requests that have been recorded, and thus determine whether other access requests submitted by the same person have been processed by other ministries as well as, where applicable, the follow-up that has been given. Generally speaking, if the Commission considers that the purposes of this processing do not call for any particular observation, it nevertheless recalls that particular vigilance is required with regard to this type of device whose purpose is in particular to carry out investigations administrative security. Insofar as the processing concerned aims, on the one hand, to protect knowledge, know-how and technologies relating to national defense or the fundamental interests of the Nation and, on the other hand art, to prevent their diversion for military purposes, terrorism or the proliferation of weapons of mass destruction,

the Commission considers that they come under articles 1 to 41 of the amended law of 6 January 1978 as well as articles 115 to 124 of the same law applicable to processing relating to State security and defence. Finally, the Commission notes that the draft decree examined also constitutes a single regulatory act, in reference to which compliance commitments will be sent to the Commission before each time processing is carried out according to the methods provided for by this text, in accordance with the provisions of article 31-IV of the law of January 6, 1978 as amended.

On the nature of the data processed

In the first place, article 2 of the draft decree provides that the "data and information relating to the person who is the subject of the request for an opinion" will be recorded in the processing and sufficiently specifies the data for which it

In this respect, the SGDSN specified that the data and information recorded in this respect will be collected on the basis of the sole elements declared by the applicant for authorization to access a ZRR. A photograph is attached to the file by the applicant to enable the services of senior defense and security officials (HFDS), responsible for examining requests for advice, to protect themselves against situations of fraudulent use of the identity of the applicant. a third party and to analyze the correspondence of information relating to the identity of the person in the event that the interrogation of the interministerial database reveals that this person has already been the subject of a request for access in ZRR . The SGDSN clarified that no facial recognition device will be implemented on the basis of the photograph collected. The Commission takes note of this. Secondly, the draft decree provides for the collection of "data and information relating to the Minister's opinion". As such, will be recorded, on the one hand, the "meaning and reasons for the opinion" and, on the other hand, the "date of transmission of the opinion". The Commission recalls that only the data necessary for the purposes pursued by the processing must be recorded and that the recording of the entire opinion is therefore only justified if, in practice, this document can be useful for subsequent instructions.

As part of the examination of the request for an opinion, the Ministry's HFDS service requests a security analysis including the performance of an administrative security investigation carried out by an investigating service, on the basis of the I of article L. 114-1 of the internal security code. The SGDSN specified that in the event of an unfavorable opinion from the Minister, the information relating to the opinion recorded in the processing will specify whether this opinion is based on the meaning of the safety opinion issued by the competent investigating service. Commission takes note of the information provided by the SGDSN according to which the data collected by this service during the safety investigation does not appear in the ministerial databases, and that only the meaning of the safety opinion formulated by this investigating service is likely to be registered. It draws the Ministry's attention to the fact that, for the examination of a request, the security notice will be processed by the

competent agents but that, with regard to the sensitivity of the information likely to be collected, it considers that the absence of recording of such data constitutes an important guarantee, likely to limit the data collected to the only data necessary for the purposes of this processing. Finally, article 3 of the draft decree specifies that sensitive data within the meaning of article 6 of the amended law of January 6, 1978, relating more specifically to political opinions, religious or philosophical beliefs or trade union membership are likely to be recorded in the processing. The Commission notes that such data will only be recorded under the categories of data "information contained in the documents provided to the head of the department, establishment or company by the person who is the subject of the request for an opinion " and "meaning and reasons for the opinion" of the Minister. If the collection of this type of data, for the information which would be transmitted by the applicant does not call for any particular observation, it nevertheless considers that particular information should be issued to the persons concerned with regard to the transmission of this type of personal data, and in particular on the limitation of their communication to what is strictly necessary with regard to the purposes of their collection. of the "meanings and reasons for the opinion" of the Minister, the SGDSN specifies that they will be by means of free fields. In this respect, the Commission recalls that only the data necessary for the purposes pursued should be collected and that it is up to the Ministry to ensure strict control of the information entered via these free fields. "Finally, the Commission notes that, in the context of training on the use of this processing, a particular point will be devoted to the precautions related to the collection of sensitive data. On the retention period of data Article 4 of the draft decree provides that personal data and information recorded in ministerial databases are kept for a period of ten years and two months from the date of transmission of the last opinion given by the minister on a request for access to a ZRR. The Commission takes note of the elements provided by the SGDSN according to which such a retention period is justified, on the one hand, by the maximum duration of the authorization issued, which is five years, and, on the other hand , by the Minister's interest in knowing whether the author of the request for access has already submitted a request and, if so, in being aware of the elements of the instruction which had then led to the issuance of a favorable opinion or an unfavorable one. Finally, it notes that it is planned that personal data and information from ministerial databases be kept in the interministerial database for a period of ten years and two months from the date of transmission of the last opinion issued by the Minister on a request for access to a ZRR. According to the SGDSN, this retention of personal data and information both in the ministerial databases and in the interministerial database is justified by the need for each minister to keep all the information relating to the requests referred to it for what concerns it, by the need to ensure that this information is shared at

inter-ministerial level and by the fact that all the ministerial agents individually designated and specially authorized by the HFDS to which they report to instruct the requests for advice will not necessarily be authorized to access the interministerial database. article 7 of the draft decree specifies that the ministerial databases are linked to the interministerial database.

ministerial databases to the interministerial database, in order to import into the interministerial database, via an exchange file transported manually from one base to another, the data from the ministerial databases. This operation will be carried out at regular intervals (at least once a week), on the initiative of the ministries concerned. This feeding of the interministerial database by the ministerial databases is justified by the fact that the processing of requests, in each ministerial department, requires checking, on the one hand, whether the same person has made requests in other ministries and , on the other hand, if this is the case, to consult certain parts of these other requests in order to identify malicious applicants. The purpose sought by the government can be achieved either by the total duplication of the ministerial bases in the interministerial base, by the transmission of only relevant files, when the need arises during an investigation. The Commission recalls that its doctrine, based both on the principle of data minimization and data security, strongly advises against the duplication of databases when they contain sensitive information, which is the case in 'species. The Commission does not dispute that it is necessary for all the names and identification information of the applicants present in the ministerial databases to be copied into the interministerial database so that the interrogation of the latter, by the persons authorized in each ministry, makes it possible to determine whether it is necessary to access the additional elements stored in the ministerial databases. On the other hand, the advance transmission of all the personal data and information recorded in the ministerial databases appears to go beyond what is necessary, since it is only occasionally that some of this information will have to be consulted in the interdepartmental database. If the bases could have been linked together by network APIs, the Commission would have recommended that the funds of the files to be consulted be uploaded on demand to the interdepartmental database, according to needs. The special procedures for exchanging information between the ministerial bases and the ministerial base, via a removable medium rather than by network interconnection for reasons of partitioning, are not such as to call into question this principle, the exchange of information between databases being always provided by the support shuttle. Consequently, given the nature of the data in question, the fact that the checks to be carried out concern, according to the elements brought to its attention, only a limited number of files in relation to all the data from each ministerial database which would be duplicated, and to the fact that it is not justified that another use of the interministerial database by its accessors would require permanent access to the all of these

data, the Commission considers that this solution should be favoured. It therefore invites the SGDSN to ensure that the interministerial database allows the investigating officers who can access it to check whether the name of the applicant in question is present in other ministerial databases and, when this is the case, that the system of the interdepartmental database generates a transfer request for the relevant elements from the ministerial databases to the interdepartmental database, similar to what would be done using a network API. These requests would be automatically transmitted, and their results automatically repatriated, during the support shuttle. According to the information available to the Commission, the interministerial database is updated every week, and the resulting extension of the investigation times would be limited. It invites the government to provide secure methods for timely feeding of the interministerial database in order, in particular, to protect the identity of the people whose data is transferred to this database, and to delete data that has become unnecessary within the interministerial database. once the checks have been carried out. The Commission also wonders whether it is necessary to include, under the category "information contained in the documents provided to the head of the department, establishment or company by the person the subject of the request for an opinion", all the information, documents and documents provided by the applicant as part of his access request file (curriculum vitae, letters of recommendation, list of publications, studies or works made, copies of diplomas or identity documents, etc.). Finally, the Commission takes note of the information provided by the SGDSN according to which no other form of interconnection or linking within the meaning of the law of 6 January 1978 as amended is provided for between the ministerial bases and any other processing of data at personal nature, in particular relating to administrative enquiries. On the rights of the persons concerned Article 8 of the draft decree provides that information in accordance with the provisions of I of Article 116 of the law of January 6, 1978 as amended appears on the form request for access to ZRRs. The Commission, which was able to consult the information that it is planned to include in the access request forms completed by people when they submit a request for access to a ZRR, considers that these information statements are sufficient. The other provisions of the draft decree relating to the absence of the right of opposition and the right of access exercised indirectly do not call Commission's recommendations. On data security The Commission considers the security measures that will be implemented to be satisfactory. The President Marie-Laure DENIS