

Deliberation 2019-056 of May 9, 2019 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Saturday July 20, 2019 NOR: CNIX1920698X Deliberation No. 2019-056 of May 9, 2019 providing an opinion on a draft decree relating to the conditions for experimenting with the use of individual cameras by firefighters in the context of their interventions (Request No. AV 19005969) (Notice RU-066) The National Commission for Information Technology and liberties, Seizure by the Minister of the Interior of a request for an opinion concerning a draft decree relating to the conditions for experimenting with the use of individual cameras by firefighters in the context of their interventions; Convention No. 108 of the Council of Europe for the protection of individuals with regard to automatic processing of personal data; 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 Directive (EU) 2016/680 of the Parliament European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation and prosecution of criminal offenses matter or execution of criminal penalties, and on the free movement of such data, and repealing Council framework decision 2008/977/JHA; Having regard to the general code of local authorities, in particular its articles L. 1424-2 and L. 1424-3; Having regard to the internal security code, in particular its articles L. 241-1 and L. 241-2; Having regard to law n° 78-17 of 6 January 1978 as amended relating to data processing, files and freedoms, in particular Article 8 and II and IV of Article 26; V u Law No. 2018-697 of August 3, 2018 on the harmonization of the use of mobile cameras by public security authorities, in particular its Article 1; Having regard to Decree No. 2005-1309 of October 20, 2005 as amended for the application of Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms; After having heard Mrs. Sophie LAMBREMON, Commissioner, in her report and Mrs. Nacima BELKACEM, Government Commissioner, in its observations, Issues the following opinion: 1. The Commission has been asked by the Minister of the Interior for an opinion on a draft decree relating to the conditions for experimenting with the use of individual cameras by firefighters in the context of their interventions. 2. This experiment, lasting three years, is provided for by article 1 of the law of August 3, 2018 referred to above which opens the possibility to professional or volunteer firefighters, as well as to soldiers of the fire brigade of Paris and the battalion of marine firefighters of Marseille (hereafter firefighters) to carry out the audiovisual recording of their interventions by means of individual cameras. This article also provides that the methods of application and use of the data collected by means of these individual

cameras are specified by a decree of the Council of State, issued after a reasoned and published opinion from the CNIL. On the applicable legal framework³. Article 1 of the aforementioned law of 3 August 2018 provides that firefighters may use individual cameras in the exercise of their missions of prevention, protection and fight against the risks of civil security, protection of people and goods and emergency relief. The audiovisual recordings must allow them to prevent incidents during their interventions, to record infringements and to prosecute their perpetrators by collecting evidence. It is also expected that these recordings will be used in the context of the training and education of agents.⁴ If the planned processing pursues in particular the purposes of prevention and detection of criminal offences, investigation and prosecution in this area or execution of criminal penalties, including protection against threats to public security and prevention of such threats, falling within the scope of Directive (EU) 2016/680 of 27 April 2016 referred to above, the Commission notes – particularly with regard to the missions entrusted to the fire and rescue services – that the latter do not constitute competent authorities in the meaning of this directive. It therefore considers that the provisions of Regulation (EU) 2016/679 of 27 April 2016 referred to above (hereinafter GDPR) should be applied. In view of the purposes of the planned processing and the nature of the data recorded, which are likely to reveal, directly or indirectly, the elements mentioned in I of Article 8 of the law of 6 January 1978 as amended, the Commission notes that the Ministry of the Interior intends to mobilize the provisions of II of Article 26 of this same law.⁶ It recalls that this article implies that the planned processing operations are implemented on behalf of the State. In this respect, the Commission observes that it follows from the provisions of Article L. 1424-2 of the General Code of Territorial Communities (CGCT) that the fire and rescue services are responsible for the prevention, protection and fight against civil security risks, the protection of people and property and emergency relief. It also notes that, in accordance with Article L. 1424-3 of the same code, these services are placed, for employment, under the authority of the mayor or the prefect acting within the framework of their police powers. In view of these elements, the Commission considers that the planned processing operations are, at least in part, implemented on behalf of the State.⁷ It also notes that the draft decree is intended to constitute a single regulatory act, within the meaning of Article 26-IV of the law of 6 January 1978 as amended. In this regard, the Commission observes that the draft decree provides for the fulfillment of a compliance commitment with the CNIL. It notes that this obligation is incumbent on the persons mentioned in I of article 2 of the draft decree who also have the capacity to seek authorization from the prefect.⁸ Finally, the Commission recalls that, in accordance with Article 35-1 of the GDPR, the data controller carries out an impact analysis relating to the protection of personal data (hereinafter DPIA) when the processing, in

particular by the use of new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to create a high risk for the rights and freedoms of natural persons. This same article provides that a single impact assessment may relate to a set of similar processing operations which present similar high risks. It notes that Article 35-10 of the GDPR expressly provides that, under certain conditions, a general DPIA can be carried out in support of legal provisions relating to the implementation of personal data processing.⁹ The Commission notes that in the present case, the creation of a single DPIA drawn up, like the draft decree, by the Ministry of the Interior also appears justified by the fact that it relates to processing which, in accordance with the provisions of article 26-IV of the amended law of January 6, 1978, serve identical purposes and implementation methods. On the request for prefectural authorization and the documents accompanying this request¹⁰. Article 1 of the aforementioned law of 3 August 2018 provides that the use of individual cameras by firefighters must also be authorized by the competent State representative. In this regard, article 2 of the draft decree provides that the chairman of the board of directors of the fire and rescue service for professional and volunteer firefighters, the commander of the brigade for soldiers of the firefighters of Paris, and the mayor of Marseilles for the soldiers of the battalion of marine firefighters of Marseilles presents to the prefect of the department or to the competent prefect of police a request for authorization concerning the use of such devices by the firefighters .¹¹ In this respect, the Commission considers that the purpose of the prefectural authorization thus issued is distinct from that pursued by this single regulatory act, since the purpose of said authorization cannot be to ensure compliance with the rules relating to the protection of personal data.¹² In addition, article 2-II of the draft decree provides that the request for prefectural authorization is accompanied by a technical file presenting the processing envisaged, the compliance commitment intended for the CNIL specifying the number of cameras that takes into account the device and the fire and rescue centers or user services, as well as, where applicable, [the] elements required by the local circumstances of implementation of the processing, complementary to the [AIPD] addressed to the [Commission] by the Ministry of the Interior with the request for an opinion on the provisions of this decree .¹³ The Commission observes that no details are provided in the draft decree with regard to local circumstances making it necessary to provide additional information with the authorization application. In this respect, it notes that the single DPIA transmitted with this draft decree invites data controllers to supplement this DPIA with regard to security measures and relations with any subcontractors, insofar as these elements will be likely to vary depending on the solution chosen by each fire and rescue service. The Commission notes that these elements are likely to characterize what local circumstances constitute, as well as

the Ministry's commitment to bring these details to the attention of data controllers. On the purposes of the processing¹⁴. As a preliminary point, the Commission notes that the planned processing operations have as their legal basis Article 6-1-e) of the GDPR insofar as they are necessary for the performance of a task in the public interest or falling within the scope of the exercise of official authority vested in the controller.¹⁵ The Commission notes that, in general, the deployment of individual camera systems is intended to meet a need for physical security for firefighters in the context of their interventions.¹⁶ Article 3 of the draft decree provides that the processing of personal data from individual cameras has the following purposes: the prevention of incidents during the interventions of agents; the recording of offenses and the prosecution of their perpetrators by collecting evidence, in the context of legal proceedings; the training and education of agents.¹⁷ The Commission observes that Article 1 of the above-mentioned law of 3 August 2018 provides, under the purposes of the measures implemented by the fire and rescue services, for the reporting of offenses and the prosecution of their perpetrators by collecting evidence, the draft decree adding the mention in the context of legal proceedings.¹⁸ However, it notes that the draft decree also seems to provide for the use of the recordings in the context of administrative or disciplinary proceedings. This possibility is mentioned both in the aforementioned legislative provisions, with regard to the retention period of the data, and in the planned regulatory provisions, in particular with regard to the recipients and the persons authorized to access the data and information collected.¹⁹ While the Commission does not intend to question the use of recordings from such devices in the context of administrative or disciplinary proceedings initiated against a staff member at the origin of an incident during execution of a civil security mission, it considers that the draft decree should expressly mention this purpose, in accordance with the provisions of article 29 of the law of January 6, 1978 as amended. In this respect, it takes note that the ministry intends to delete in the draft decree the mention in the context of a legal procedure.²⁰ Moreover, while it is not for it to question the circumstances in which the legislator intended to allow – on an experimental basis – the use of these devices by firefighters, the Commission notes that, with regard to this same purpose of noting offenses and prosecuting their perpetrators by collecting evidence, the competent authorities could be sent these recordings in their capacity as authorized third parties. With regard to the scope of implementation of individual camera devices, the draft decree expressly provides that only individual cameras provided to firefighters as personal equipment are authorized, which excludes the use of any other device allowing the capture of visual and sound elements, and in particular personal cameras.²² With regard to situations in which firefighters are authorized to trigger the recording, article 1 of the law of 3 August 2018 provides that individual cameras may be used when a fire incident

occurs or is likely to occur. likely to jeopardize [the] physical integrity of the [firefighters], given the circumstances of the intervention or the behavior of the persons concerned . It specifies that the recording is not permanent and cannot be triggered in the event that it is likely to infringe medical secrecy .²³ The Commission notes that the draft decree does not provide any further details as to the situations and places in which firefighters are authorized to activate their cameras. In this respect, it observes that, contrary for example to what has been provided for by the legislator with regard to the devices used by municipal police officers, there is nothing to indicate in this case that the recordings could be made anywhere. and, in particular within the homes of individuals. In this context, she wonders about the exact scope in which these can be used. The Commission considers that the draft decree should be supplemented on this point.²⁴ The Commission also notes that the DPIA transmitted with the draft decree mentions an instruction relating to the use of individual cameras intended in particular to provide instructions to firefighters on their use. This instruction will be accessible on the website of the Ministry of the Interior, on the website and by posting in the premises of the fire and rescue services.²⁵ The Commission considers that if the Ministry is unable to draw up an exhaustive list of the circumstances likely to justify the triggering of the cameras, this instruction should provide for objective criteria governing the use of these devices, in order to avoid any collection disproportionate amount of personal data. It considers that specific rules should be laid down, in particular in the event that the cameras could be used within residential premises, such as restricting the possibility of doing so in certain circumstances and guaranteeing systematic individual information of the person concerned. , if necessary, at the end of the intervention.²⁶ With regard to the data processed, Article 4 of the draft decree lists the categories of personal data and information recorded in the processing implemented, namely the images and sounds captured by individual cameras, the day and recording time slots, the identification of the agent carrying the camera when recording the data, as well as the place where the data is collected.²⁷ If the use of sound recording systems coupled with video devices can pose difficulties with regard to the requirement of proportionality resulting from the texts relating to the protection of personal data, the collection of sound data nevertheless appears relevant in this case. and taking into account the purposes pursued by these arrangements.²⁸ The draft decree provides that the data recorded in the processing is likely to reveal, directly or indirectly, sensitive data, with the exception of data concerning health.²⁹ The Commission recalls that I of article 8 of the amended law of January 6, 1978 lays down the principle of a ban on the processing of such data. However, IV of this same article provides that processing, whether automated or not, justified by the public interest and authorized under the conditions provided for in II of Article 26, is not

subject to the prohibition provided for in I, which is the subject of this draft decree.³⁰ In addition, Article 9-2-g) of the GDPR provides that the processing of such data is possible when it is necessary for a reason of important public interest, on the basis of Union law or the law of the European Union. a Member State which must be proportionate to the objective pursued, respect the essence of the right to data protection and provide for appropriate and specific measures to safeguard the fundamental rights and interests of the data subject, which is the case here. The processing should then offer appropriate safeguards for the rights and freedoms of the data subject. In this respect, the Commission notes that it will be prohibited in particular to select a particular category of persons in the processing operations on the basis of these data alone.³¹ The Commission notes that, in accordance with the provisions of Article 1 of the aforementioned law of 3 August 2018, which prohibits the initiation of recording in cases where it would be likely to infringe medical secrecy, the draft decree expressly provides that the processing cannot relate to data concerning health. In this respect, it considers that the instruction on the use of individual cameras should specify the conduct to be adopted with regard to the risk of breach of medical secrecy.³² With regard to the use of audiovisual recordings for educational and training purposes, Article 7 of the draft decree provides that these should be anonymised. In this regard, the Commission recalls that anonymization implies preventing any individual re-identification of the persons concerned by the recordings. It follows that this must relate to the visual (blurring) and sound (distortion or deletion, in particular of ambient conversations) elements of these recordings, that it must in particular concern any physical characteristic as well as any element relating to the individual situation. of the persons concerned or to the particular context of the intervention.³³ Under these conditions, the Commission considers that the data processed is adequate, relevant and not excessive with regard to the purposes pursued, in accordance with the provisions of Article 5-1-c) of the GDPR. On the retention period of data³⁴. Article 1 of the law of August 3, 2018 provides that audiovisual recordings are erased after six months, except in the event that they are used in the context of legal, administrative or disciplinary proceedings. The draft decree specifies the starting point of this retention period, namely six months from the day of their registration .³⁵ This retention period, which is longer than the periods commonly accepted by the Commission in the context of the implementation of video surveillance systems, must make it possible to take into account the average processing times for legal, administrative or disciplinary proceedings. In this regard, the Commission points out that the storage period is a fixed period and not a maximum period. As a result, the data processed cannot be deleted before the end of this period, at the risk of depriving the persons concerned of the possibility of accessing the data which concern them and therefore of asserting them, if necessary,

within the framework of a procedure.³⁶ Article 7 of the draft decree specifies that at the end of this period the recordings are subject to an automatic purge, and that when the data have been extracted and transmitted for the purposes of a procedure, they are kept according to the rules specific to each type of procedure.³⁷ The Commission considers that the data collected are kept for a period that does not exceed the period necessary taking into account the purposes for which they are collected and processed, in accordance with Article 5-1-e) of the GDPR. On the recipients of the data³⁸. Article 6-I of the draft decree provides that the following are authorized to access the data, within the limits of their respective powers and their need to know: the director and the deputy director of the fire and rescue service, the commander and second in command of the Paris fire brigade, the commander and second in command of the battalion of marine firefighters in Marseille, on the one hand, and the agents individually designated and authorized by the aforementioned authorities, on the other hand. Only these same people are authorized to carry out data and information extractions, within a specific legal framework (judicial, disciplinary or open administrative procedure) or for the purposes of a training or educational action for agents.³⁹ Furthermore, article 6-II of the draft decree provides that the recipients of all or part of the data and information recorded in the processing operations may be addressed, each within the limits of their respective attributions and subject to the need to know in the legal, administrative or disciplinary proceedings, as well as training: judicial police officers and agents of the national police and gendarmerie, inspectors and associated inspectors of the general inspection of civil security, the management authority exercising disciplinary power as well as the agents in charge of examining the files presented to these bodies and the agents in charge of staff training.⁴⁰ These categories of authorized persons and recipients do not call for any particular observation. On the information and rights of the persons concerned⁴¹. With regard to the information of the persons concerned, article 1 of the law of August 3, 2018 provides that the cameras are worn visibly by the agents and that a specific visual signal indicates whether the camera is recording. It also provides that the triggering of the recording is subject to information of the persons filmed, unless the circumstances prohibit it.⁴² In view of these guarantees, the Commission considers that recording cannot be made without the knowledge of the person concerned. However, it considers that, if certain circumstances prohibit the immediate notification of the persons concerned of the initiation of recording, the aforementioned provisions do not exempt the agents from issuing this information on a deferred basis, as soon as these circumstances have ceased and, at the latest, at the end of the intervention. It recalls that such information must enable the data subjects to effectively exercise their rights.⁴³ Article 1 of the law of August 3, 2018 also provides that general information for the public on

the use of individual cameras is organized by the Minister of the Interior. Article 9-I of the draft decree specifies that this information is provided on the website of the fire and rescue service or, failing that, by posting in the service.⁴⁴ With regard to information and access rights, Article 9-III of the draft decree provides that the persons concerned may exercise them directly with the management authority of the territorially competent fire and rescue service. It further provides that in order to ensure public safety, the prevention, investigation, detection, detection and prosecution of criminal offenses or the execution of criminal penalties, including protection against threats to the public security and the prevention of such threats and the protection of the rights and freedoms of others, the right of access may be subject to limitations pursuant to 1 of Article 23 of the GDPR. In the event of limitations, the right of access is exercised with the CNIL.⁴⁵ In general, the Commission notes that the generic scope of these limitations, which include provisions c), d) and i) of 1 of Article 23 of the GDPR, appears particularly broad, without any clarifications having been made. on the possibility, in the present case, of using these provisions. In the absence of such details, it considers that it is unable to assess the necessity and proportionate nature of such a measure.⁴⁶ The Commission also recalls that, in the event that the Ministry actually intends to limit the scope of the right of access, it would in particular be responsible for justifying the extent of the limitation introduced in accordance with the provisions of Article 23-2- c) GDPR. In this case, the Commission questions the advisability of providing for the exercise of a right of access with limitations. In particular, it notes that in the event of limitations, the real effectiveness of the right of access to data cannot be guaranteed for all persons likely to be concerned by the processing in question (persons filmed, third persons at the intervention but likely to appear in recordings and public officials) with regard to the data retention period (six months unless legal, administrative or disciplinary proceedings are initiated) and the non-centralized nature of this processing.⁴⁷ With regard to the right to limit processing, the Commission notes that the single DPIA transmitted indicates that this is guaranteed by Article 7 of the draft decree which provides that, when the data have, within the retention period of six months, been extracted and transmitted for the purposes of legal, administrative or disciplinary proceedings, they are kept according to the rules specific to each of the proceedings by the authority responsible for them.⁴⁸ The Commission considers that the purpose of this provision should be distinguished from that of Article 18 of the GDPR, which has a broader scope. In any case, it recalls that the existence of the right to request the limitation of processing must be brought to the attention of the persons concerned, in accordance with the provisions of Article 13-2°-b) of the GDPR. It therefore requests that the draft decree be supplemented on this point and expressly mention the existence of this right.⁴⁹ The Commission notes that, with regard to the right of

opposition, the draft decree specifies that, pursuant to Article 23 of the GDPR and Article 38 of the law of 6 January 1978 as amended, it does not is not intended to apply to planned processing.⁵⁰ Finally, it notes that the rights to erasure and portability of the persons concerned do not apply in this case which, with regard to the provisions of Articles 17-3-b) and 20-3 of the GDPR, does not call for any particular comment. The Commission also takes note of the clarifications provided that the exercise of the right of rectification cannot, in this case, be implemented. On security measures⁵¹. Article 1 of the law of August 3, 2018 provides that the personnel to whom the individual cameras are provided cannot have direct access to the recordings they make. Article 5 of the draft decree specifies that the data recorded by the individual cameras are transferred to a secure computer medium as soon as the agents return to service. This article adds that the recordings can only be consulted at the end of the intervention and after their transfer to a secure computer medium. No transmission system allowing the images to be viewed remotely in real time can be implemented.⁵² The Commission considers that these prohibitions in principle must be accompanied by technical measures such as to guarantee that agents do not consult the recordings. In addition, operational measures could be envisaged to guarantee that the recordings, once transferred to a dedicated server, are only viewed within a specific legal framework (judicial, disciplinary or open administrative procedure).⁵³ Regarding data access controls, the Commission recalls that the authentication of persons authorized to access the data processed must comply with its doctrine, specified in deliberation no. 2017-012 of 19 January 2017 adopting a recommendation relating to passwords.⁵⁴ The Commission also recommends that the management of user and processing administrator authorizations be the subject of a formalized procedure, validated by the data controller and brought to the attention of users.⁵⁵ Article 8 of the draft decree provides that each operation of consultation, extraction and deletion of data is subject to recording in the processing or, failing that, to consignment in a register specially opened at this item which includes the number, surname, first name and rank of the agent carrying out the operation, the date and time of the operation, as well as the legal, administrative, disciplinary or educational reason, the service or unit receiving the data and the identification of the audiovisual recordings extracted and of the camera from which they came. In the absence of any clarification on this point, the Commission points out that the register must be kept in conditions such as to guarantee the integrity of the data and that it cannot be left at the disposal of the officials concerned.⁵⁶ In any case, it recommends that automatic logging be integrated into the recording management software and that the traces be analyzed regularly.⁵⁷ In the absence of details concerning the logging architecture, the Commission can only recall that it is necessary to centralize locally the time-stamped event logs on the basis of a reliable time source and

exported in a secure manner, and to ensuring the security of logging equipment and logged information.⁵⁸ Article 8 of the draft decree provides that the traces are kept for three years. In this respect, the Commission wonders about the relevance of keeping the traces of the consultation, extraction and deletion operations for such a period even though the data which are the subject of these operations are themselves deleted. after six months, except where they are used in the context of legal, administrative or disciplinary proceedings.⁵⁹ The Commission notes that different types of equipment exist which do not systematically provide for the encryption of the data stored on the memory card present in the camera, which could allow viewing of the video sequences by a third party, in the event of theft of the equipment. In this regard, it notes that the AIPD provides for the use of cameras with an irremovable memory, constituting a first level of guarantee. With regard in particular to the nature of the data processed, it considers that data controllers should also favor devices subject to real encryption and not simple obfuscation, and access to which is reserved for the management software. recordings.⁶⁰ In addition, an integrated solution should be implemented to ensure the security of the recordings from the unloading of the camera to their use in the context of legal, administrative or disciplinary proceedings. In particular, the recordings should be kept individually encrypted, signed and time-stamped on the storage server, and the latter should be subject to backup measures.⁶¹ The Commission notes that the DPIA expressly provides that in the event of recourse to subcontracting, it is up to the fire and rescue service to complete the impact analysis carried out by the Ministry of the Interior to demonstrate that the level of security is guaranteed. In this respect, Commission recalls that the external hosting of data leads to considering the provider of the hosting solution as a subcontractor within the meaning of Article 28 of the GDPR. It recalls the obligation of the data controller to establish an agreement with its subcontractor in order to define the distribution of responsibilities and obligations incumbent on each of the contracting parties.⁶² Subject to the preceding observations, the safety measures described by the Ministry of the Interior for the devices implemented by the authorities managing the fire and rescue services for the benefit of the firefighters seem to comply with the requirement of security provided for in Article 32 of the GDPR. The Commission points out, however, that this obligation involves updating the security measures with regard to the regular reassessment of the risks and the subsequent impact analysis. On the transmission of a report ⁶³. The Commission notes that the Article 10 of this draft decree provides that, within nine months before the end of the experiment, the management authority of the fire and rescue service sends the Minister of the Interior a report on the use of personal cameras by firefighters, including an assessment of the impact of the use of these cameras on the progress of interventions and the number of legal, administrative and disciplinary proceedings for

the purposes of which consultation and extracting data from individual cameras. In this respect, the Commission should also receive these elements, which will be carefully examined so that it can decide in full knowledge of the facts if this type of system should be made permanent. L. DENIS