

Deliberation 2022-043 of April 14, 2022 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

Opinion Legal status: In force Date of publication on Légifrance: Saturday August 20, 2022 NOR: CNIX2222302V Deliberation No. 2022-043 of April 14, 2022 providing an opinion on a draft decree relating to the extension of the recipients of video surveillance images (request for opinion no. 21019626) The National Commission for Computing and Liberties, Request for opinion requested by the Minister of the Interior concerning a draft decree relating to the extension of the recipients of video surveillance images;

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 (GDPR);

Considering the modified law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms, After having heard the report of Mrs. Sophie LAMBREMON, commissioner, and the observations of Mr. Benjamin TOUZANNE, commissioner of the Government, Issues the following opinion: The National Commission for Computing and Liberties (hereafter the Commission) has been informed by the Ministry of the Interior of a draft decree relating to the extension of the recipients of images of video protection. This draft decree applies Articles L. 252-2, L. 252-3 and L. 255-1 of the Internal Security Code (CSI), as amended by Article 40 of Law No. 2021-646 of May 25, 2021 for global security preserving freedoms, in order to authorize municipal police officers as well as certain agents of the City of Paris mentioned in articles L. 531-1, L. 532-1 and L. 533-1 of the same code to access video protection images. Article L. 255-1 of the CSI provides that a Conseil d'Etat decree, adopted Following the opinion of the National Commission for Video Protection and the National Commission for Computing and Liberties, sets the terms of application of these provisions. This decree must in particular set the conditions under which the agents mentioned in the second paragraph of Article L. 252-2 and Article L. 252-3 are authorized to access the recordings for the sole purposes of their mission, as well as the requirements for training and regular updating of knowledge in the protection of personal data which they must meet in order to be authorized. It must also specify the technical measures implemented to guarantee the security of the recordings and ensure the traceability of access to the images. to overall security, it had noted that the evolution of these provisions means that the images collected by means of video protection devices can be viewed by a large number of people. It recalled that it is important, on the one hand, that strong guarantees be implemented so that only duly authorized personnel can actually view these images, in the strict need of their mission and that,

on the other hand, adequate security measures are implemented, particularly in terms of traceability of access. is informed of the existence of a video protection device as well as the identity of the authority or person responsible.

The Commission notes that the procedures for informing people are not indicated in the draft decree because, according to the Ministry, they are specified in Article R. 253-3 of the CSI, as amended by Decree No. 2015 -489 of April 29, 2015. The Ministry does not intend at this stage to modify the procedures for informing the persons concerned which appear in article R. 253-3 of the CSI resulting from decree no. 2015-489 of April 29, 2015 The Commission observes, however, that, with regard to the information that must appear on posters or placards, the provisions of this text, of which it has not been referred for an opinion, no longer comply with the regulations relating to the protection of personal data. The Commission recalls more broadly the need to quickly provide a coherent, comprehensive and sufficiently protective legal framework for the rights of individuals in the field of video protection. Indeed, many provisions of the CSI, which constitute the general legal framework in this area, are obsolete since the evolution of the regulations on the protection of personal data in 2018. They therefore do not allow data controllers to know the actual state of their obligations in this matter (for example, the need to carry out an impact analysis relating to data protection), nor to the persons concerned to know how to exercise their rights. On the recipients of the processingThe draft decree adds the status of recipients of video protection images to municipal police officers, to Paris city officials in charge of a police service, to controllers falling under the status of Parisian administrations exercising their functions in the specialty of the public highway, to Paris surveillance agents as well as to Paris municipal police agents. If the Commission takes note of e these modifications resulting from Article 40 of the aforementioned Law No. 2021-646, it notes however that these provisions have the effect of greatly broadening the recipients of video surveillance images. It therefore calls for strict supervision of the authorizations of personnel to view these images, in particular in order to limit access to persons with a need to know and to avoid any use that would not be in accordance with the purposes of the processing. the conditions of authorization and the obligation to train agentsIn the first place, article 3 of the draft decree specifies by which authority will be designated and authorized the agents of the national police or gendarmerie services, customs agents or fire and rescue services, municipal police officers as well as the officers mentioned in articles L. 531-1, L. 532-1 and L. 533-1 of the CSI, recipients of images and recordings of video protection systems. Provision is made for these officers to be individually designated and duly authorized by the head of service or head of unit with departmental, regional, zonal or national jurisdiction under whose authority they are assigned, and for municipal police officers as well as the agents mentioned in articles L. 531-1,

L. 532-1 and L. 533-1, by the head of the municipal police department or the municipal police director under whose authority they are assigned, or by the mayor .Article 3 of the draft decree also indicates that the aforementioned agents are recipients of images and recordings of video protection systems solely for the purposes of their missions. The Commission notes that this condition derives directly from the provisions of Article L. 255-1 of the CSI as amended by Article 40 of Law No. 2021-646 of 25 May 2021 for global security preserving freedoms. However, it calls for particular vigilance regarding the authorizations that will be put in place and for their regular updating. In this respect, it notes that the Ministry plans to send a circular to the prefectures, the purpose of which will be to draw their attention to these points in particular. The Commission notes that the procedures for accessing images by these agents will be detailed in the administrative and technical file accompanying the request for authorization from the prefect required by article R. 252-3 of the CSI. Insofar as the authorizations are issued on a case-by-case basis in order to be able to be adapted to the context specific to each organization and to verify during the examination of the file the methods of access to the images implemented, the ministry indicates that it It does not seem appropriate for a regulatory text to list in detail all the terms and conditions for accessing the images, the latter having to be adapted to the risks in question. The Commission nevertheless considers that these methods could be detailed in an employment doctrine adopted at ministerial level on the use of cameras, especially since the openness of recipients makes the number of agents potentially concerned very large. On this point, it notes that it is planned that an employment doctrine be formalized to set the general rules for the use of cameras. The Commission also notes that municipal police officers as well as City of Paris officials will not be able to access images taken by video protection systems that are not implemented on the territory of the municipality or the intermunicipality on which they carry out their missions. It considers that this guarantee, required by the Constitutional Council in its decision no. 2021-817 DC of May 20, 2021, should be added to the draft decree and takes note of the fact that this point will be verified as part of the investigation. prefectural authorizations issued. Secondly, article 3 of the draft decree also provides for an obligation of training in the protection of personal data for the agents mentioned in the second paragraph of article L. 252-2 and in Article L. 252-3 of the CSI. The Commission observes that the training methods for these agents are regulated by law. By way of illustration, with regard to municipal police officers and municipal police officers of the city of Paris, their training is governed in particular by articles L. 511-6 and L. 533-3 of the CSI. Article L. 511-6 of the CSI indicates that municipal police officers are subject to initial and continuous training obligations, organized and provided by the National Center for the Territorial Public Service (CNFPT). According to the ministry, this legal

corpus is necessary and sufficient to implement in the training of the agents concerned any module related to data protection. The catalog of CNFPT continuing education courses offers, for example, a course relating to the obligations of the municipal police in terms of security and the protection of personal data. It also notes that it is not intended that the content of the training must comply with any particular specifications. It notes, however, that the Ministry should ensure that each of the agents concerned undergo specific training in the challenges of protecting personal data. In view of these elements, this provision does not call for any further comment on the part of the Commission. On security measures Article L. 255-1 of the CSI provides that the decree specifies the technical measures implemented to guarantee the security of the recordings and ensure the traceability of access to the images. The draft decree is limited to providing in article 4 that CCTV systems are equipped with technical devices to guarantee the integrity of recordings as well as the traceability of image consultations. The Commission recalls that the security of the recordings includes not only the integrity of the recordings but also the need to ensure their confidentiality and their availability. It therefore recommends that the Government supplement Article 4 of the draft decree accordingly and takes note of the ministry's commitment on this point. The Commission regrets that the ministry refers the definition of the technical standards to be observed to a ministerial order, namely the decree of August 3, 2007 defining the technical standards of video surveillance systems. Indeed, this decree defines generic elements and requires in particular that data controllers set security objectives according to the purpose of the camera. The Commission therefore invites the Ministry to complete the draft decree on this point. It will also be up to the data controllers, for the implementation of their processing, to take into account the protection of data and the risks on the persons concerned when defining the security objectives to meet the security obligations provided for by the articles 5.1.f) and 32 of the GDPR as well as article 99 of the law of January 6, 1978 as amended. The president,

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