

Deliberation 2021-066 of June 3, 2021 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

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n° 2021-066 of June 3, 2021 providing an opinion on a draft decree in Council of State relating to the secure electronic delivery of bulletin n° 3 of the criminal record (request for opinion n° 21005493) The National Commission for Computing and Liberties, Seizure by the Ministry of Justice of a request for an opinion on a draft decree relating to the issuance by secure electronic means of bulletin no. 3 of the criminal record;

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 (General Data Protection Regulation);

Considering the code of penal procedure, in particular its article 779;

Having regard to law n° 78-17 of 6 January 1978 as amended relating to data processing, files and freedoms, After having heard Mrs. Christine MAUGÜÉ, commissioner, in her report and Mr. Benjamin TOUZANNE, government commissioner, in his observations , Issues the following opinion: The Commission was seized on March 9, 2021, pursuant to Article 779 of the Code of Criminal Procedure (CPP), with a draft decree in Council of State aimed at allowing the issuance by secure electronic means of bulletin no. 3 (B3) of the criminal record. This provision provides that the measures necessary for the execution of articles 768 to 778, and in particular the conditions under which must be requested, established and delivered the bulletins n° 1, 2 and 3 of the criminal record, are determined by a decree in Council of State taken after opinion of the National Commission of data processing and freedoms. The draft decree submitted modifies articles R. 82, R. 84 and R. 306 of the CPP. The Commission recalls that it has already been called upon to rule on the system for the dematerialized issuance of extracts from criminal records in its deliberation No. 2015-415 of 19 November 2015 providing an opinion on a draft decree relating to the provisions concerning the content and the issue of extracts from the criminal record. The B3 is the extract which contains the most limited content. It indicates the list of convictions pronounced by a national jurisdiction for the crimes or misdemeanors which are listed in article 777 of the CCP, when they are not excluded from bulletin n° 2. This bulletin can only be communicated to the data subject or their legal representative. With regard to the procedures for issuing the B3, the current article R. 82 of the CPP provides that: the request, which must specify the civil status of the person concerned, can be made by letter or by secure electronic means; the B3 can also be obtained if the person it concerns goes to the automated national

criminal records service and proves their identity; it can also be requested by secure electronic means by the central authority of a Member State of the European Union, entered by the person concerned, regardless of their place of birth. The Commission notes that this draft decree, which constitutes the first stage in the overhaul of the national criminal record, aims to allow, in order to authenticate oneself to the teleservice which is already functional and which makes it possible to formulate a request for an extract from the B3, the use of the FranceConnect service, created by the decree of November 8, 2018. The integration of authentication by FranceConnect into the national criminal records teleservice aims in particular to simplify the process for people, and to reduce the risk of issuing of a ballot to a person other than its holder. It acknowledges that the use of FranceConnect to authenticate will be optional since, on the one hand, authentication to the teleservice will be maintained by means of a form where the user's identity data must be entered and, on the other hand, the postal route to request the issue of the B3 for people eligible for this system; abolish the hand delivery of the B3 to the national criminal records department, due to the implementation of the dematerialization of the issuance of the B3. The Commission notes that the method of identification via FranceConnect will in theory be offered to all applicants for the B3. However, it considers that the proposed amendment to Article R. 82 of the CPP seems to indicate that this functionality will only be accessible to applicants born abroad, applicants whose place of birth is unknown or applicants aged less than twelve years old and considers that the draft decree should be modified in order to clarify this point. The other B3s will be sent by registered letter with acknowledgment of receipt to applicants. On the general conditions for implementing the system Firstly, the Commission notes that the purpose of the deletion of the fourth paragraph of article R. 82 of the CPP is to take note of the closure of the physical reception of the locker national judicial system since September 24, 2018, for people born in metropolitan France or in certain overseas territories (Guadeloupe, Guyana, Martinique, Mayotte and Reunion). It observes that this draft decree does not modify the provisions relating to the procedures for issuing the B3 for persons born in New Caledonia, French Polynesia and the Wallis and Futuna Islands (articles R. 290 et seq. as well as R. 306 CPC). Persons residing in these territories but born outside them may request the issuance of the B3 in the usual manner provided (by post or via the national criminal records teleservice). The Ministry specified that the persons concerned may in particular be aware of the different possibilities of requesting the issuance of the B3 depending on their place of birth and the possible support put in place to help them through various information appearing on the websites of the Ministry of Justice (www.justice.fr and www.casier-judiciaire.justice.gouv.fr) and www.service-public.fr. The Commission also notes that the page on the Ministry of

Justice website allowing applications for the B3 to be issued is translated into several languages (English, German, Spanish) and is accessible to visually impaired people. Commission takes note that the teleservice includes a filter on the date of birth which relates to the age of twelve and that only a legal representative is authorized to request an extract from the B3 by post addressed to the national criminal record. For minors between the ages of twelve and seventeen, it acknowledges that the legal representative can apply for a B3 via the online service or by post. With regard to adults protected under guardianship, it also notes that only the guardian can apply for the issue of the B3 by mail addressed to the national criminal record. On the other hand, it notes that an adult under judicial protection, under curatorship or under reinforced curatorship can apply for the issuance of the B3 himself. Secondly, with regard to the operation of the planned system, the Commission notes that in principle - and subject to the clarification of the wording of the decree as indicated in point 4 - any person, whatever their nationality, may request a copy of their B3 via the teleservice set up and by identifying themselves with FranceConnect. People who try to connect with FranceConnect but who do not have an identifier with this service because they are not entered in the National Directory for the Identification of Individuals (RNIPP) or whose identity is not validated (for example: persons born abroad and having never worked in France, cases of homonymy, etc.), will receive an error message transmitted by FranceConnect . The Commission takes note of the clarifications provided by the Ministry according to which, in this case, these people will be able to return to the home page of the website offering the teleservice and choose, depending on their situation, to submit their request using the form or by post, attaching the supporting documents requested. On the performance of a data protection impact assessment (DPIA) The Commission notes that the file sent does not contain a data protection impact assessment data (Articles 35 and 36 of the GDPR). It notes that the Ministry indeed considers that the addition of the authentication functionality by Franceconnect does not raise the level of risk, the use of this service being on the contrary intended to secure B3's request. Therefore, its implementation does not entail the need to carry out a DPIA on this processing. This analysis relating to the sole use of authentication via FranceConnect does not call for any particular observations. is likely to generate a high risk, as provided for by the guidelines which were adopted on April 4, 2017 by the group for the protection of individuals with regard to the processing of personal data, called G29 and taken up by the Committee European Data Protection, were met with regard to the online service for issuing B3s, namely the processing of large-scale data and the processing of data relating to vulnerable persons. However, the guidelines specify that in most cases, the data controller can consider that processing satisfying two criteria requires DPIA. In addition, the Commission notes the existence of a risk of

illegitimate access to data since the department mentions the use of the history of requests in order to search for B3 applicants in number to identify institutional applicants. In this respect, it has in particular been identified, on several occasions, that certain employers made the B3 request instead of the recruited person. The Commission observes that, in 2018, the Ministry considered that the establishment of the issue of the B3s did not lead to an increase in the level of risk and did not require the performance of a DPIA. In view of the foregoing, however, it recalls that the technical and organizational measures must be regularly assessed and, in view of the risks invoked, it therefore recommends that the Ministry carry out a DPIA as part of its implementation in compliance for all the operations necessary for the proper functioning of the criminal record and considers that this should be sent to him in the event that it reveals high residual risks, in accordance with Article 36 of the GDPR.

securityThe Commission takes note of the implementation of logging on the consultation tool and functional logging on the operations and documents created. It notes that the purpose of these logs is to detect and prevent illegitimate operations on the main data. These may be subject to requisitions in compliance with the texts in force. The retention period for the logs of the six-month consultation tool complies with the recommendations of the Commission. It notes that these logs, which can be consulted by all CJN agents, are intended to respond to requesters on the history and follow-up of their requests. The retention period for functional logging is three years, which the Commission considers it to be proportionate given the existence of known and proven misuse of the processing as well as the real risks for the persons concerned with regard to the data likely to appear in B3. It therefore stresses the need to implement measures to combat such diversions. It notes that these traces correspond to a history of operations and documents created, they are only accessible to administrators. They are used to respond to any appeals and allow the ministry to carry out self-monitoring, i.e. detect repeated requests from B3 to identify employer requests and target them for awareness campaigns according to the details provided. by the ministry.

On the data collectedThe Commission observes that it appears from the presentation document sent to it by the ministry that, when the applicant identifies himself by FranceConnect, the civil status data (title, surname, his first name(s), date, department and place of birth) are already filled in on the form (...) this is data from the RNIPP check carried out by FranceConnect. It notes that the article 3 of the decree of 8 November 2018 relating to the teleservice called FranceConnect provides for the categories of personal data recorded. In this respect, with regard to data relating to the sex of the applicant, the Commission takes note that this will be verified using the data entered in respect of civil status. The President Marie-Laure DENIS