

Deliberation 2020-035 of March 19, 2020National Commission for Computing and LibertiesNature of the deliberation:

OpinionLegal status: In force Date of publication on Légifrance: Wednesday June 24, 2020NOR: CNIX2009380Deliberation No. 2020-035 of March 19, 2020 providing an opinion on a draft decree relating to the processing of personal data relating to foreigners requesting the issuance of a visa (VISABIO) (request for opinion no. 19020505)The National Commission for Computing and Liberties,

Entry by the Minister of the Interior of a request for an opinion concerning a draft decree relating to the processing of personal data relating to foreigners requesting the issuance of a visa;

Having regard to 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;

Considering the code of social action and families, in particular its articles L. 251-1 and L.254-1;

Considering the code of entry and residence of foreigners and the right of asylum, in particular its articles L. 611-6 and L. 611-7 and R. 611-8 to R. 611-15;

Having regard to the Social Security Code, in particular its article L. 160-1;

Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its article 33;

Having regard to decree no. 2010-112 of February 2, 2010 relating to the general security reference system (RGS);

Having regard to decree n° 2019-536 of May 29, 2019 as amended, taken for the application of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms;

Having regard to deliberation no. 2012-293 of September 13, 2012 providing an opinion on a draft decree relating to the application of the management of the files of foreign nationals in France and the automated processing of personal data relating to foreigners requesting the issue of a visa ;

Having regard to deliberations no. 2017-012 of January 19, 2017 adopting a recommendation relating to passwords and no. 2017-190 of June 22, 2017 amending the recommendation relating to passwords; After hearing Mrs. Sophie LAMBREMON ,

Commissioner, in her report, and Ms. Nacima BELKACEM, Government Commissioner, in her observations,

Issues the following opinion:1. The draft decree in Council of State submitted for opinion to the Commission aims to authorize the consultation of certain processing data relating to foreigners requesting the issuance of a visa (VISABIO) by social security bodies. This consultation must thus make it possible to verify compliance with the conditions of care under state medical aid (AME) provided for in article L. 251-1 of the social action and family code (CASF) and urgent care provided for in Article L. 254-1 of the same code, and more specifically irregular stay.

2. The Commission notes that this verification is part of an overall context of combating the phenomenon of fraud in these schemes by foreign nationals who, being in a regular situation, are not entitled to benefit from them.

3. In accordance with article L. 611-7 of the code for the entry and stay of foreigners and the right to asylum (CESEDA) which provides that a decree in Council of State, taken after consulting the Commission National Computing and Liberties, sets the terms of application of Article L. 611-6. , and the provisions of II of article 33 of the law of January 6, 1978 as amended, the modification of this processing is submitted to the Commission for its opinion.

4. In this context, the draft decree modifies the purposes of VISABIO processing as provided for in Article R. 611-8 of the CESEDA, so that it also aims to facilitate the verification of the eligibility conditions of foreign policyholders for aforementioned devices. It also modifies the recipients of this processing as provided for in Article R. 611-12 of the CESEDA in order to provide as accessors the agents of social security bodies, who will query the VISABIO processing, through the intermediary of a web service, for the purposes of verifying whether or not there is a current visa as part of the processing of an AME application. On the purposes of the processing and the addition of new recipients5. The Commission recalls that, in accordance with the terms of Article L. 611-6 of the CESEDA, the fingerprints and a photograph of foreign nationals may, and in the context of the issuance of a visa must, be subject to automated processing.

6. In this respect, it recalls that the provisions of Article R. 611-8 of the CESEDA expressly provide that the purposes of VISABIO processing are: - to better guarantee the right of residence of persons in a regular situation and to fight against the illegal entry and stay of foreigners in France, by preventing document fraud and identity theft;
- to allow the processing of visa applications by proceeding in particular to the exchange of information, on the one hand, with national authorities and, on the other hand, with the authorities of the Schengen States through the information system on visas (VIS) for biometric data relating to visas for a stay of less than three months issued by the French authorities.7. In this

context, article 1 of the draft decree provides for the addition of a provision to the aforementioned article in order to allow social security organizations to verify compliance with the conditions of coverage under the medical aid of the State provided for in the first three paragraphs of article L. 251-1 of the code of social action and families and urgent care mentioned in article L. 254-1 of the same code.

8. The Commission notes first of all that this amendment aims to add a new purpose to VISABIO processing. In this respect, it takes note of the clarifications provided by the Ministry according to which this consultation, carried out by the social security bodies on the basis of the mission of public interest (article 6.1-e of the GDPR), is intended solely to enable verification the absence of regularity of stay, without having the purpose of verifying compliance with the conditions of presence on the territory or of resources. In this respect, the Commission takes note of the ministry's commitment to modify, at its request, the draft decree accordingly.

9. It also observes that the legislator, in Article L. 611-6 of the CESEDA, defined the general purposes - guaranteeing the right of residence of persons in a regular situation and combating the illegal entry and residence of foreigners in France - based on the collection and processing of fingerprints and a photograph of the persons concerned, without however defining in an exhaustive manner the essential characteristics of the VISABIO processing, the creation of which is provided for by decree. Article L. 611-6 does not therefore prevent the regulatory power from specifying the purposes and other characteristics of this processing in compliance with the objectives assigned by law. In this respect, the amendment before it, which also has the effect of creating a new category of recipients for VISABIO processing, for the purpose indicated in the previous point, does not appear incompatible with the provisions of Article L. 611 -6 cited above.

10. Article 2 of the draft decree provides that the aforementioned data may be consulted for the sole purpose of carrying out the checks mentioned in 7° of Article R. 611-8, agents of social security organizations individually designated and specially authorized by the directors of these bodies.

11. The Commission takes note of the clarifications provided by the Ministry according to which the social security bodies thus referred to are the primary health insurance funds (CPAM) and the general social security funds (CGSS) which examine these applications on behalf of the State in the overseas communities.

12. In view of the foregoing, the Commission considers that access to the processing data of the persons covered by the draft decree is legitimate. 'State13. Without commenting on the other elements of the verification of irregularity of stay by the social

security organizations to examine an application for AME, and in particular the consultation of the AGDREF 2 processing, of which it is not seized, the Commission takes note that consultation of VISABIO via the web service will be systematic for any request for reimbursement under the AME in the event of the absence of a passport, an expired passport or an incomplete passport.

14. It also acknowledges that the agents of the social security bodies, after having correlated the information present on the CERFA AME request form with that appearing on the identity document presented, will query the web service allowing consultation of VISABIO from the surname, first name and date of birth of the applicant, by filling in this information using the indications given in the CERFA S3720 form.

15. The Commission recalls that particular attention should be paid to the consequences of a match with VISABIO processing, given the specific challenges of reliability of some of the data recorded therein and in particular those of civil status documents.

16. It takes note of the clarifications provided by the Ministry according to which the consultation of VISABIO does not fall within the framework of article 47 of the law of January 6, 1978 relating in particular to decisions producing legal effects or significantly affecting data subject, taken on the sole basis of automated processing of personal data.

17. The Commission also takes note of the clarifications provided by the Ministry according to which the query system only allows the consultation of VISABIO data, without any data being recorded in this processing. On the other changes envisaged (nature and retention period of the data collected, rights of individuals and security measures)

On the data collected and their retention period18. Article 2 of the draft decree provides first of all that the consultation of VISABIO will relate to data relating to the surname, first name, date and place of birth, the photograph of the foreigner as well as the issue of a visa, its date, its period of validity and the travel documents . The Commission observes that this information forms part of the list of personal data recorded in VISABIO and listed in Annex 6.3 of the CESEDA.

19. The Commission takes note of the ministry's undertakings that no sensitive data from VISABIO will be processed in the context of this consultation, the digitized images of faces not being used for biometric comparisons but for visual checks carried out by the agents of social security organizations.

20. It also takes note of the clarifications provided by the Ministry according to which the data relating to travel documents consist of the type of travel document and the number of the travel document and that this access will allow social security bodies to verify that the person requesting the benefit of the AME is the person who holds the visa identified during the

consultation of VISABIO.

21. With regard to the recording of information from VISABIO in the instruction tool of the AME, the Commission notes that the Ministry has indicated that no information from VISABIO will be recorded in the instruction tool of the AME, only the trace of the consultation being kept and that, in cases where the consultation of VISABIO leads to the refusal of the benefit of the AME or urgent care, a screenshot will be made in order to keep a record of the query carried out by the social security body in the event of an administrative appeal. It is also specified that in case of refusal of the file, it is kept in a living database.

22. While the Commission takes note of the clarification provided by the Ministry relating to the integration of a screen copy of the VISABIO query in the paper file and/or in the document archiving system, it nevertheless wonders about the possibility of doing so without any data from VISABIO being recorded in the AME instruction tool. Under these conditions, it recalls that if data from VISABIO were to be recorded in another processing, it would be appropriate to modify the act governing this processing, if necessary.

23. Subject to these reservations, the Commission considers that the categories of data thus processed and collected within the framework of the consultation of VISABIO by the social security bodies are adequate, relevant and limited to what is necessary with regard to the purposes for which they are used. are processed, in accordance with article 5-1-c) of the GDPR.

24. With regard to the data retention period, the Commission takes note of the clarifications provided by the Ministry according to which in the event of refusal to grant the AME, the file is kept in an active database for the legal duration of the appeal period extended by one month, then archived for a maximum of five years.

25. It nevertheless notes that Article R. 611-11 of the CESEDA provides that the retention period for the personal data mentioned in Article R. 611-9 is five years from their registration. In the absence of justification such as to allow the extension of this storage period and the modification of Article R. 611-11, the Commission considers that the data cannot be stored for more than five years.

26. It therefore requests that the act governing the AME processing provide, where appropriate, for a retention period compatible with that provided for in article R. 611-11 of the CESEDA. On the rights of data subjects²⁷. Article 3 of the draft decree provides the conditions under which the rights of information, access, rectification and limitation of the persons concerned are exercised.

28. Although the procedures for exercising rights do not generally call for comments from the Commission, it takes note of

several commitments by the Ministry, namely: - the modification of the information notices of the CERFA S3720 form in order to add information relating to the consultation of the VISABIO processing in order to verify the existence or not of a valid visa and the consequences that the observation of the possession of a valid visa has on eligibility for AME or urgent care;

- the modification of the draft decree in order to mention, as provided for in Article 23 of the GDPR, the reasons (fight against documentary fraud and fraud in benefits provided by social security bodies) justifying the exclusion of the right to opposition.²⁹ The Commission also notes that if Article 3 of the draft decree transmitted provides that the rights are exercised with the Ministry of Foreign Affairs (Directorate of French nationals abroad and the consular administration), the Ministry responsible for immigration (immigration department) or the service where the visa application was submitted, the persons concerned will be, according to the details provided by the ministry, invited to contact the authority that issued the visa that is the subject of the dispute. .

30. Given this clarification, the Commission considers that the information notice linked to the CERFA S3720 form should explain the practical conditions for the exercise of their rights by the persons concerned.

31. Subject to this reservation, the Commission considers that the rights of information, access, rectification and limitation of data subjects are effective, in accordance with the provisions of Articles 13, 15, 16 and 18 of the GDPR. security³². With regard to corrective measures for the rights of individuals, and in particular raising awareness among the officials concerned of social security organizations of the risks to the privacy of individuals, the Commission considers that these should in any case be taken before the implementation of the treatment.

33. Access to VISABIO processing is carried out, for users of the Ministry of the Interior, using a thick client application, that is to say using an application in front of be installed on the computer of the user wishing to access the processing. In order to be able to consult the treatment, it is necessary that the users of the ministry authenticate themselves. This authentication can be done through the ministry's various single sign-on portals (known as SSO): Cheops-NG, Proxyma, Passage².

34. With regard to agents of social security organizations wishing to access the processing, the latter access it through a web service after having obtained authorization from the health insurance organization on which they depend. cases where agents have to authenticate themselves using a combination of identifier and password, the Commission invites the Ministry to make any necessary changes in order to bring its password policy into line with the recommendations of the Commission relating to passwords. It recommends, in the present case, the use of strong authentication, where this is feasible.³⁵ The Commission

notes that privileged, generic accounts allowing the administration of server bases exist. These accounts are shared between six super-users who can use them from their dedicated administration workstation. It invites the ministry to, as far as technically possible, limit the use of shared generic accounts and to provide administrators with nominative administration accounts.

36. The Commission also notes that the various traces and technical logs (known as logs) have heterogeneous retention periods ranging from one month to one year, without centralization.

37. It recommends, on the management of traces and logs, to implement a retention period not exceeding six months and to achieve, in order to be able to ensure the integrity and availability of the latter, a trace centralization system.

38. In the alternative, the Commission notes first of all that different profiles exist in the processing, in particular a user profile, allowing the reading in consultation of the alphanumeric data entered in the processing and a so-called advanced profile allowing in particular the extraction of data biometrics. It notes that, with regard to this last profile, the obligation to go through strong authentication by smart card is being implemented and invites the Ministry to complete this technical solution as soon as possible.

39. The Commission also takes note of the encryption implemented by the Ministry with regard to the database of correspondence between alphanumeric data and biometric data as well as the encryption of flows.

40. On this last point, it recalls that this encryption must also apply to the flows of the web service allowing the consultation of the processing by the CPAM / CNAM agents under the conditions provided in particular by Ordinance No. 2005-1516 of 8 December 2005 on electronic exchanges between users and administrative authorities and between administrative authorities and by the decree of February 2, 2010 referred to above.

The president,

M.-L. Denis