

Deliberation 2023-011 of February 9, 2023 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Tuesday April 25, 2023 NOR: CNIX2311074X Deliberation n° 2023-011 of February 9, 2023 providing an opinion on a draft decree authorizing the implementation of automated processing of personal data relating to video surveillance and access control systems to premises and rights-of-way under the Ministry of the Armed Forces (request for opinion no. 21017569) (RU no. 71) The National Commission for Computing and Liberties, Request for an opinion by the Minister for the Armed Forces concerning a draft decree authorizing the implementation of automated processing of personal data relating to video surveillance systems and control of access to premises and rights-of-way under the Ministry of Defence; Having regard to Law No. 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms, in particular Article 31 and its title IV; Having heard the report of Mrs Isabelle LATOURNARIE-WILLEMS, Commissioner, and the observations of Mr Damien MILIC, Deputy Government Commissioner, Issues the following opinion: The Commission has been asked for an opinion by the Ministry of the Armed Forces of a draft decree authorizing the implementation of automated processing of personal data relating to video surveillance and access control systems, intended to ensure the security of certain premises and rights of way under this ministry and to ensure the protection of the interests of national defence. The ministry specified that these are the rights-of-way mentioned in article 8 of the decree of August 9, 2012 fixing the specific methods of organization of the prevention of occupational risks at the ministry of defence, namely "any coherent and clearly identified geographical area consisting of built and unbuilt buildings, hosting several organizations or branches of organizations as well as establishments not under the Ministry of Defence". Depending on the site, video surveillance or access control devices may cover the entire right-of-way, certain areas, or only part of a building. The draft order is intended to constitute a single regulatory act within the meaning of IV of article 31 of the law. Only places of direct interest to national defense are likely to be covered by this single regulatory act. In view of the number of sites likely to be concerned by this draft decree, it is necessary to ensure the homogeneity of the conditions for implementing the planned processing. Processing that does not fall within the defined framework by this single regulatory act must be governed by a specific regulatory act. This would thus be the case for biometric access devices. The scope of this processing concerns: personal access authorization devices and access control systems, by automated badge controls, or human beings; video surveillance systems filming only the interior of sites subject to entry restrictions; intercom systems which make it possible in particular to record sound; vehicle access authorization devices and systems for viewing license plates. The Ministry has

indicated that an employment doctrine relating to the conditions for implementing the planned processing will be drawn up and distributed in order to support the various data controllers. On the purposes and legal regime of the processing Article 1 of the draft decree mentions that the purposes of the processing are to ensure the security of the premises and premises of the Ministry of the Armed Forces and the protection of the interests of national defence. These purposes are determined, explicit and legitimate within the meaning of article 4 of the law of January 6, 1978. The ministry indicates that the processing is not intended to monitor staff members; the images collected will therefore not be intended to serve as the basis for disciplinary sanctions, with the exception of those motivated by behavior likely to undermine the security of the site. With regard to the purposes pursued, the processing falls under the legal regime of title IV of the amended law of 6 January 1978, insofar as they are of interest to national defence. On the data collected The draft decree distinguishes the data processed according to the type of processing implemented. The draft decree excludes that the processing includes a facial recognition device. In addition, the ministry indicated that it was not its intention to collect voice templates from the sound recordings, nor to do voice recognition. In any event, such processing of biometric data could not be covered by a simple decree. On the authorization and access control system for rights-of-way and premises (I of article 2 of the draft): I of Article 2 of the draft judgment provides for the collection of numerous personal data concerning the agents of the Ministry of the Armed Forces, visitors and external service providers involved in the context of long-term missions. In accordance with the principle of data minimization, only the data strictly necessary to pursue the purposes of the processing must be collected; each processing implemented within the framework of this single regulatory act must respect this principle. access of the person to the right of way concerned. Depending on the site, this check can be automated and, if necessary, supplemented by a check carried out by an agent at the entrance to the premises. On intercom (II of article 2 of the draft): Intercom systems allow sound to be recorded when activated by the person ringing the intercom. Particular vigilance must be paid to their location, in order to avoid picking up sound from public roads. On video surveillance (II of article 2 of the draft): Article 2 of the draft decree specifies that offices and workstations, places of privacy and conviviality, those intended for trade union activities as well as their direct access, cultural spaces and the places in which exchanges covered by professional secrecy and national defense secrecy are held cannot be filmed. The Commission takes note of these guarantees. The Ministry has specified that video surveillance devices will film continuously, day and night. Article 2 of the draft order specifies that the processing mentioned in Article 1 may take the form of fixed or mobile, i.e. cameras on board piloted or automated vehicles or individual cameras carried by the agents ensuring

the security of the site. The Ministry indicates that these mobile devices are intended to allow real-time viewing of images at the security post and thus facilitate the response to incidents observed. The Commission considers that the deployment of fixed and mobile cameras must be strictly necessary and proportionate with regard to the purposes pursued by the processing. The number of cameras must be limited and adapted to the size of the premises and premises considered by the Ministry of the Armed Forces, as well as to the risks that these places are likely to present for the protection of the interests of national defense. Article 2 of the draft decree also provides for the possibility of making sound recordings coupled with video surveillance outside the hours at which the rights-of-way or premises are usually accessible. According to the ministry, these recordings are intended to make it possible to ascertain the nature of the incident from a distance (for example, intrusion of a person or an animal) and to adapt the response accordingly. Video devices coupled with sound recordings are, by nature, more intrusive than those allowing only the capture of images. The Commission takes note of the details provided by the Ministry of the Armed Forces, according to which the need to capture sound is explained by the fact that the images are less readable at night, and that many areas are made up not of premises but of land . With regard to the purposes pursued by the processing, it nevertheless wonders about the need for such sound recording. On the system for authorizing access to vehicles and viewing license plates (III of article 2 of the draft): The draft order provides that the photograph of the vehicle, as well as that of its occupants, will be collected. In this regard, the department specifies that this last collection is incidental, the photograph of the vehicle may include the photograph of its occupants. Under these conditions, the Commission requests that the cameras be installed at an angle such that it excludes the shots of the occupants of the vehicles. It takes note of the ministry's commitment to remove the mention of taking photographs of any occupants of the vehicle in 3° of III of article 2 of the draft decree. Vehicle registration plate display systems compare the license plate to the list of vehicles authorized to enter the site, which allows the lifting of an automatic barrier. These visualization systems do not make it possible to visualize the public road, due to the existence of security locks. The Commission notes that vehicle checks will take place exclusively at the entrance to the sites and does not cover the tracking of vehicles within the car park. ' decree provides that, with regard to access control systems and vehicle license plate display systems, the data is kept for a period not exceeding one year from the expiry date of the access authorization. The Ministry has indicated that these provisions must make it possible, in the event of a security incident, to know the names of the people who have entered the site. This retention period is proportionate to the purposes pursued by the processing, with regard to ministry officials and external service providers involved in long-term

assignments. With regard to visitors, the Commission questions the proportionality of this duration. In addition, this duration could be determined by each data controller covered by the draft order depending on the degree of sensitivity of the site concerned. For example, the decrees relating to video surveillance and access control systems to the premises and premises of the Ministry of the Environment (decree of June 6, 2016) and the Ministry of the Interior (decree of August 14, 2014) set a retention period for visitor data of no more than three months. In addition, the Commission wonders about the starting point of this period from the expiry date of the access authorisation. It considers that this starting point should correspond to the date of each visit to the site concerned and not to the expiry date of the general access authorization issued to agents and service providers. video-surveillance and intercom systems, Article 3 of the draft decree provides that the data is kept for a period not exceeding one month, which does not call for any comments from the Commission. data recipientsI of article 4 of the draft decree mentions the list of data accessors who may be either the "person responsible for implementing the processing" or the agents responsible for the security and protection of the place concerned, specially designated and individually authorized by this person. Indeed, within the meaning of the law "Informatique et Libertés", only the notion of "data controller" exists. It follows from the indications given by the Ministry that this person would be, for each of the processing likely to be implemented on the various sites of the Ministry of the Armed Forces, the one more particularly in charge of it. The Commission therefore considers that: - this notion must imperatively be clarified in 1° of I of Article 4 of the draft decree, otherwise it may lead to confusion; this person should thus be designated as the person "responsible for implementing the processing" rather than as the "responsible" for it; - this person must be specially designated and individually authorized by the controller; - the agents in charge of the security and protection of the place can only be specially designated and individually authorized by the data controller himself, and in no case by the "person responsible for the implementation of the processing", as currently provided for in the 2° of I of Article 4 of the draft decree. The Ministry has specified that the data is only accessible from a workstation and cannot be consulted remotely. The recipients of the data may be within the strict limits of their attributions and the need to know: - the hierarchical authorities, for the sole purpose of initiating an investigation based on one of the purposes of the processing; - the agents of the bodies and services of inspections and control, as part of an investigation based on one of the purposes of the processing. On the rights of the persons concernedArticle 6 of the draft decree provides that the "person responsible for the implementation of the processing" informs the persons concerned by posting at the entrance to the rights-of-way and premises under the Ministry of the Armed Forces; it is also with her that the rights of access, rectification and

erasure are exercised. To comply with the provisions of articles 116 and 119 of the law of January 6, 1978, information and the exercise of the rights of access, rectification and erasure can only be the responsibility of the data controller or his representative. . The Commission therefore invites the Ministry of the Armed Forces to modify the project accordingly. With regard to intercom systems, a display panel must be installed next to the doorbell button in order to inform the persons concerned that a sound recording takes place as soon as they appear on the intercom. With regard to video surveillance systems, the cameras must be installed in a visible and not concealed manner, and display panels must inform the persons concerned. Particular attention should be paid to mobile devices. In the event that the Ministry wishes to implement video surveillance devices coupled with sound devices, specific information must be issued in order to inform the persons concerned of the existence of sound recording. On security measures Article 5 of the draft decree provides that the logging data is kept for a period not exceeding one year, before intermediate archiving for a period of up to five years. The ministry has undertaken to reduce the retention period in intermediate archiving at three years, instead of five years. The other provisions of the draft order do not call for comments from the Commission. President Marie-Laure DENIS