

Deliberation 2019-027 of March 29, 2019National Commission for Computing and LibertiesNature of the deliberation:

OpinionLegal status: In force Date of publication on Légifrance: Saturday March 30, 2019NOR: CNIX1908583X Deliberation No. 2019-027 of the opinion on a draft decree laying down various provisions relating to the automated processing of personal data called "Automated Rapid Passage to External Borders" (PARAFE)The National Commission for Information Technology and Liberties, Seizure by the Minister of the Interior of a request for opinion concerning a draft decree laying down various provisions relating to the automated processing of personal data called Rapid Automated Passage to External Borders (PARAFE); Having regard to Convention No. 108 of the Council of Europe for the protection of persons with regard to the automated processing of personal data; Having regard to Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 concerning a Union code relating to the system of border crossings by persons (Schengen Borders Code)Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and the free movement of such data, and repealing Directive 95/46/EC; Having regard to Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 with regard to the strengthening of checks in the relevant bases at the external borders; Having regard to the internal security code, in particular its articles R. 232-6 to R. 232-11; Having regard to the law No. 78-17 of January 6, 1978 amended relating to data processing, files and freedoms, in particular Articles 27 and 30; Considering decree No. 2005-1309 of October 20, 2005 amended taken for the application of the n° 78-17 of January 6, 1978 relating to data processing, files s and freedoms; Having regard to deliberation no. 2007-094 of 3 May 2007 giving an opinion on a draft decree creating an automated processing of personal data relating to passengers at French airports crossing the external borders of the States Parties to the Convention signed in Schengen on June 19, 1990; Having regard to deliberation no. 2010-105 of April 15, 2010 providing an opinion on a draft decree amending decree no. 2007-1182 of August 3, 2007 creating an automated processing of personal data relating to passengers at French airports crossing the external borders of the States parties to the Schengen Convention signed on June 19, 1990; Having regard to deliberation no. 2016-012 of January 28, 2016 providing an opinion on a draft decree amending of an automated processing of personal data called PARAFE; On the proposal of Mrs Sophie LAMBREMON, commissioner, and after having heard the observations of Mrs Nacima B ELKACEM, Government Commissioner, Issues the following opinion: The Commission has been asked by the Minister of the Interior for an opinion on a draft decree from the Council of State containing various provisions relating to the

automated processing of personal data called Rapid Automated Crossing at External Borders (PARAFE). The PARAFE system, governed by Articles R. 232-6 to R. 232-11 of the Internal Security Code, aims to improve and facilitate the implementation of border controls at border crossing points maintained by the French border guard services at the external borders of the Schengen area by allowing automatic crossing of these borders. Travelers eligible for the PARAFE system, and who so wish, can therefore use dedicated airlocks in order to satisfy the aforementioned checks from the automated reading of their passport and the verification of the associated biometric data (fingerprints or facial recognition) recorded when registering for the PARAFE program or when issuing this identity document. substantial measures which must surround the PARAFE system in order to ensure a high level of data protection for the persons concerned. It recalls in this regard that it considers legitimate the use of biometric recognition devices to ensure the identity of a person, since the biometric data is stored on a medium used by the person. exclusive, as is the case for the biometric passport. The Commission considers in this respect, as it has recalled in numerous deliberations, that the establishment and maintenance of a central biometric database can only be accepted insofar as imperative requirements in terms of security or public order justify it. It recalls in particular that the processing of data such as fingerprints, in a centralized form, generates more risks from the point of view of the protection of personal data, taking into account both the characteristics of the element of physical identification retained, the possible uses of this processing and the risks of serious breaches of privacy and individual freedoms resulting therefrom. It takes note of the changes envisaged by the Ministry aimed, in the long term, at abolishing the central database of fingerprints and requests, in any event, to be duly informed of the effective nature of this change. The Commission recalls that the impact assessment relating to data protection (DPIA) will have to be updated accordingly. The Commission also recalls that when it examined, in 2016, the modification of the mechanism aimed at using a new biometric technique (facial recognition) in order to authenticate travelers using PARAFE airlocks to cross the external borders of the European Union, it noted in particular under the guarantees implemented that the operation of this new device would not require not the creation of a central database. These general elements recalled, the Commission notes that the modifications envisaged by this draft decree aim to: widen the public eligible for the PARAFE system as well as the type of document that can be presented when using it ;allow systematic querying of the database for stolen or lost travel documents stolen or lost travel documents (SLTD) from Interpol. The Commission considers that PARAFE processing, the purpose of which is to streamline police checks at the external borders, falls within the scope of Regulation (EU) 2016/679 of 27 April 2016 referred to above (hereinafter GDPR). Insofar as it is

implemented on behalf of the State, acting in the exercise of its prerogatives of public power, and that it relates to biometric data necessary for the authentication or the control of the identity persons, its modification must be the subject of a decree in Council of State, in accordance with articles 27 and 30 of the law of January 6, 1978 modified. With regard to the legal basis of the processing, the Commission observes that the Ministry intends to avail itself of the performance of a task in the public interest or relating to the exercise of official authority vested in the controller in accordance with in article 6-1-e) of the GDPR. As PARAFE processing is likely to create a high risk for the rights and freedoms of the persons concerned, it notes that a data protection impact assessment (DPIA) has been sent to it. On the expansion of the eligible public to the PARAFE scheme As a preliminary point, and with regard to the general observations formulated relating to biometric devices, the Commission recalls that the expansion of the public eligible for the scheme can in no way legitimize the maintenance of a central database, nor its massive extension, to the detriment of the use of biometric devices that are more protective of the freedoms of the persons concerned. Firstly, the draft decree provides that minors aged twelve or over may use the PARAFE device. The Commission takes note of the clarifications provided by the Ministry according to which this modification is part, on the one hand, in the context of a growing increase in world air traffic and, on the other hand, aims to respond to the strengthening of European legislation relating to border controls. In this context, the Ministry specified that the development of the public eligible to pass through the airlocks of the PARAFE system must make it possible to maintain reinforced controls at the borders without degrading the fluidity of traffic. If the Commission does not intend to question the justifications invoked, it considers that the possibility for minors to be eligible for the PARAFE scheme must be accompanied by strict guarantees. , will be able to use the device and this, only in order to enter the territory. The Commission also notes that in accordance with the provisions of the aforementioned Schengen Borders Code (CFS), minors under the age of twelve may not under any circumstances use this device, the regulatory provisions in force prohibiting the taking of their fingerprints. It also takes note of the Ministry's clarifications that when a minor over the age of twelve registers for treatment, a holder of parental authority must give his consent by means of an authorization given to the guardian. border. Beyond these guarantees, the Commission considers that special measures should be implemented by the Ministry to take into account the addition of this category of people, who are necessarily more vulnerable. As such, it considers that the information that will be provided to them should be reinforced, and the retention period of the data concerning them adjusted. Secondly, the draft decree provides for opening the system to adults of Monegasque or Andorran nationality or third-country nationals holding a residence permit for a family member of a citizen of

the European Union provided for by article 10 of directive 2004/38/EC issued by France or by another Member State of the European Union and currently valid. The Commission notes that these nationals are exempt from in-depth checks and are not, moreover, subject to stamping of their travel document when entering and leaving the territory of a Member State, in accordance with the provisions of the CFS. Subject to the elements previously recalled concerning the maintenance of a centralized biometric database, this extension does not call for any particular observation on the Commission. On the documents that can be presented with or without prior enrollment The draft decree aims to replace the term passport with that of travel document in accordance with the recommendations of standard 9303 of the International Civil Aviation Organization. The Commission notes that this modification should allow travelers to use, in addition to their passport, their national identity card, provided that it is machine-readable (biometric, with a chip or by means of a MRZ). This addition does not call for any particular comments from the Commission. On querying Interpol's SLTD database Article 3 of the draft decree provides that the alphanumeric processing data may give rise to consultation of the document file stolen and lost travel documents from Interpol (in the same way as the file of wanted persons and the Schengen information system). The Commission notes that this change is intended to take account of changes in European regulations in this area. In this respect, it observes that Article 8-2 of the CFS provides that on entry and exit, persons enjoying the right to free movement under EU law are subject to the following checks: the verification of the identity and nationality of the person as well as the authenticity and validity of his travel document for crossing the border, including by consulting the relevant databases, in particular (...) Interpol's Stolen and Lost Travel Documents (SLTD) database. The Commission notes that, in accordance with the CFS, this database will be searched systematically. It also takes note of the conservation, for statistical purposes only, of the number of hits and the absence of recording, within the PARAFE processing, of the nature or detail of the query carried out. above, the Commission considers that the querying of the Interpol SLTD database does not, in principle, call for any particular observation insofar as it makes it possible to harmonize the conditions for the automatic control of passengers using the airlock quickly with those of traditional regulatory control. However, it considers that the draft decree should be supplemented in order to expressly mention the systematic nature of this questioning. It takes note of the ministry's commitment to amend the draft decree accordingly. On the data retention period The Commission notes that the retention period for data currently recorded in PARAFE processing is five years. It recalls that it is important to adapt this retention period to the categories of persons concerned and that, as such, it considers that a shorter retention period should be set for minors aged twelve or over. It recalls that recital 38 of the GDPR

clarifies that children deserve specific protection with regard to their personal data because they may be less aware of the risks, consequences and safeguards involved and of their rights related to the processing of personal data. personal data. The Commission notes that the Ministry now intends to limit the retention period for data relating to minors to three years. It takes note of the modification to be made of the draft decree in this sense. Finally, the Commission takes note that the traces of the actions of the directors and agents are kept in the processing for a period of two years, and that the draft decree will be modified so that it is expressly mentioned. It also notes that technical traces are collected and stored locally at each airlock. It acknowledges that these data relate exclusively to the nationality of the passport as well as its date of issue, and that they are also subject to regular archiving. On the rights of data subjects Article 4 of the draft decree provides that the rights of information, access, rectification, erasure, limitation and opposition provided for in Articles 13, 15, 16, 17, 18 and 21 of the Regulations are exercised with the Chief the border police or airport customs service; maritime ports and railway stations concerned either in writing or directly to the registration desk. With regard to data subjects' right to information, the Commission recalls that Article 12-1 of the GDPR states that the controller takes appropriate measures to provide any information in a concise, transparent, understandable and easily accessible, in clear and simple terms, in particular for any information intended specifically for a child. leaflet, appended to all agreements concluded with infrastructure managers as well as through display panels. It also notes that information will be provided on the website of the Ministry of the Interior. Without calling into question the measures implemented by the Ministry, the Commission regrets that the site dedicated to the PARAFE system is no longer accessible. It also considers that the information currently communicated to the persons concerned could be enriched and updated, particularly with regard to changes in the regulations relating to the protection of personal data. Finally, it recalls that recital 58 of the GDPR provides that children deserving specific protection, any information and communication, when the processing concerns them, should be written in clear and simple terms that the child can easily understand . Therefore, and in view of the general philosophy of European regulations aimed at strengthening the effective exercise of the rights of data subjects, it considers that specific measures must be implemented with regard to minors. If it takes note of the elements transmitted by the ministry in this direction aiming to ensure the delivery of this information in clear, concise terms and formulated with simple words, it regrets that the targeted support was not communicated to it. On security measures The Commission acknowledges that security measures are subject to regular reviews and that security audits have been carried out. In this context, it notes that an action plan has been drawn up, providing for reasonable implementation

deadlines. The Commission notes that the technical conditions for querying the SLTD database are not mentioned in the DPIA sent by the ministry. It recalls, in any case, the need to ensure that data exchanges are carried out via encrypted communication channels, ensuring the authentication of the source as well as the recipient. The Commission considers that the security measures described by the data controller comply with the security requirement provided for in Article 32 of the GDPR. However, it recalls that this obligation requires the updating of security measures with regard to the regular reassessment of risks. In this regard, she recalls that specific attention should be paid to the reassessment of security measures as part of the update of the impact assessment. The President M-L.DENIS