Deliberation 2020-094 of October 1, 2020Commission Nationale de l'Informatique et des LibertésNature of the deliberation: OpinionLegal status: In force Date of publication on Légifrance: Friday July 16, 2021NOR: CNIX2120012VDeliberation No. 2020-094 of October 1, 2020 providing an opinion on a draft decree amending decree no. 2011-111 of 27 January 2011 authorizing the implementation by the Ministry of the Interior (General Directorate of the National Gendarmerie) of automated processing of personal data to help the drafting of procedures (LRPGN) (request for opinion no. 19022795)The National Commission for Computing and Liberties,Seizure by the Minister of the Interior of a request for an opinion concerning a draft decree amending the decree n° 2011-111 of January 27, 2011 authorizing the implementation by the Ministry of the Interior (General Directorate of the National Gendarmerie) of an automated processing of personal data of a assistance in drafting procedures (LRPGN); 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; Having regard to Directive 2016 /680 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 by competent authorities for the purposes of the prevention and detection of criminal offences, investigations and prosecutions in this area or the execution of criminal penalties, and to the free movement of such data and repealing Framework Decision 2008/977/JHA of the Council; Having regard to Law No. 78-17 of 6 January 1978 as amended relating to computer e, to files and freedoms; Considering decree n° 2011-110 of January 27, 2011 creating an automated processing of personal data called LRPPN 2; Considering decree n° 2019-536 of May 29, 2019 taken for the application of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Having regard to deliberation n° 2010-119 of May 6, 2010 providing an opinion on a draft decree in the Council of State establishing a processing of personal data relating to assistance in the drafting of procedures and writings called ICARE; Having regard to deliberation no. 2012-365 of October 11, 2012 providing an opinion on a draft decree amending the decree n° 2011-110 of January 27, 2011 creating an automated processing of personal data called LRPPN 2; After having heard Mrs. Sophie LAMBREMON, Commissioner in her report, and Mr. Benjamin TOUZANNE, Government Commissioner, in his observations ,Issuing the following opinion:The writing software for pros cédures de la gendarmerie nationale (LRPGN) facilitates and standardizes the drafting of legal and administrative procedures as well as the transmission of the resulting information to the competent authorities. This software, on which the Commission ruled in its

deliberation no. for judicial, administrative or statistical purposes. In this respect, the Ministry specified that these connections pursue a dual objective: that of supplying other processing operations with regard to their purposes (such as, for example, the processing of criminal records), on the one hand, and to record in the LRPGN data from other files, considered useful for the conduct of proceedings (for example, information relating to traffic offenses recorded in the national driving license system) the other hand. From the outset, the Commission emphasizes that the LRPGN, in that it allows the drafting of procedures of various kinds, as well as the input of other files, necessarily pursues very broad operational objectives and therefore entails difficulties relating to the precise perimeter of its purposes. restructuring of the information systems of the national gendarmerie. As such, the LRPGN is intended to be replaced by a new processing called LRPGN-NG in the first quarter of 2022, which will have to be referred to the Commission, under the conditions of article 31 of the amended law of January 6, 1978. Changes currently envisaged by the ministry must allow the experimentation of the digital criminal procedure thanks to the linking of the LRPGN processing and the application of digitization of the criminal procedures. He also specified that an experimental phase was to be carried out in two departments, with the aim in particular of testing the procedures for transmitting natively digital procedures from the security forces to a court, as well as the electronic signature of documents drawn up by investigators in the context of a procedure. In addition to this experiment, the changes envisaged relate in particular to the scope of processing as well as the legal regime applicable to it, the categories of data collected (and in particular information from other files) , the retention periods, as well as the rights of the persons concerned, a consequence of the evolution of the legal regime. Finally, the Commission notes that according to the Ministry, the LRPGN processing is implemented for the purposes of prevention and detection of infringements criminal proceedings, investigation and prosecution thereof or the execution of criminal penalties, including protection against threats es for public security and the prevention of such threats within the meaning of the aforementioned directive 2016/680, and also relates in part to state security. It follows from the evolution of the legal framework relating to the protection of personal data that the provisions applicable to the processing of data appearing within this system and relating to State security are excluded from the scope of the directive. 2016/680 and fall specifically under articles 1 to 41 and 115 to 124 of the amended law of 6 January 1978. Finally, insofar as the data mentioned in I of article 6 of this same law are likely to be recorded, the modification of the LRPGN processing must be the subject of a decree in Council of State, taken after opinion reasoned and published by the Commission. The draft decree submitted for opinion to the Commission calls for the following observations. On the modification of the purposes of the

processing Article 1 of the draft decree aims to modify the provisions governing the LRPGN, in order to detail its purposes , on the one hand, and considering the pursuit of new purposes on the other. In this respect, it provides that the purposes of the processing are: to enable the gendarmerie units to ensure the clarity and consistency of the drafting of judicial and administrative procedures in the exercise of their police missions; to carry out the archiving; to allow the collection of information resulting from these procedures, with a view to their distribution and their use; to allow the connection with the processing of data relating to judicial and administrative procedures. On a preliminary basis, the Commission notes that the draft decree specifies that the processing must henceforth make it possible to carry out the archiving of the procedures covered by the LRPGN file. If in general this purpose does not call for any particular observation, it nevertheless considers that it deserves to be clarified, insofar as it is aimed more at a processing operation than the purpose for which it is carried out. It therefore invites the Ministry to clarify the draft decree on this point, by explicitly mentioning the objective pursued by this operation (for example, the subsequent reopening of legal proceedings). Article 1 of the draft decree provides that the LRPGN allows the collection of information resulting from these procedures, with a view to their dissemination and use as well as the linking with the processing of data relating to judicial and administrative procedures. The Commission points out that in their current wording, the provisions relating to the LRPGN only concern the transmission of information resulting therefrom to the processing mentioned in Article 4, i.e. the operating judicial system (JUDEX). In this regard, Article 4 of Decree No. 2011-111 of January 27, 2011 is replaced by the following provisions: in accordance with the purpose provided for in 4° of Article 1, the processing mentioned in the same article may be implemented relationship with other processing of personal data relating to the legal and administrative procedures implemented by the gendarmerie units or by the police services. The draft appendix also provides that, in respect of the elements recorded in the context of a judicial or administrative procedure, the data and information necessary for the conduct of the investigations, resulting from the consultation of the processing of data concerning the procedures, may be collected. judicial and administrative measures implemented by the gendarmerie units or by the police services. The Commission notes that the draft decree thus aims to regulate the collection of data from other files within the LRPGN as well as the possibility of transmitting the information contained therein for the purpose of recording in other processing operations. It takes note of the clarifications provided by the Ministry according to which the dissemination of information corresponds to the transmission to the judicial or administrative authority and that the exploitation of this data aims to use the information provided for the purpose of resolving the investigation. As a preliminary point and in general, the

Commission underlines the importance of ensuring that only processing operations containing relevant, adequate and necessary data with regard to the purposes of the LRPGN processing can be consulted, in strict compliance with the provisions governing the all of these files. Similarly, it considers that particular attention must be paid to the methods of data collection, which are likely to entail particular risks for the persons concerned, due for example to incorrect data collection and this, in reason for example of manual recording in a consulted process. In addition, it considers that, given the particularly sensitive nature of some of this processing, ad hoc measures will absolutely have to be developed in order to ensure the effective updating of the data thus consulted and imported into the LRPGN. the Ministry indicated that it was not in a position to draw up an exhaustive list of the processing operations likely to be questioned and intended to feed the LRPGN or be fed by it, given their large number and the specificities of each survey, rendering by nature , impossible to draw up a relevant list. In this respect, it considers that this impossibility has the consequence of depriving the Commission of all the information relating to the procedures for implementing the interconnections, connections, and reconciliations likely to be implemented. If it emphasizes that the mention of interconnections, reconciliations and connections is not required by the provisions of article 35 of the law of January 6, 1978 as amended, it considers that, insofar as the ministry itself has chosen to make supplying these different files is an intrinsic purpose of the LRPGN expressly mentioned in Article 1 of the draft decree, and not a simple technical functionality serving other purposes, the processing operations being able to be linked or being the subject of The interconnections with this file should have been specified in the draft decree. It recalls in this respect that Article 4-2° of the amended law of January 6, 1978 requires that the purposes of the processing be determined and explicit. It also considers that both Article 4 of the draft decree, which provides for the linking with other processing of personal data concerning legal and administrative procedures, which its appendix allowing, in respect of the data collected, the recording of information from other files, does not make it possible to apprehend, the nature or scope of the files likely to be targeted. to be fed by any file. Under these conditions, the Commission considers that, in the absence of the Ministry being able to detail the processing likely to be questioned, in respect of the purposes of the processing, or of Article 4 of the draft decree, it cannot be very reserved as to the planned modifications. It also considers that this requirement for precision as to the scope of the processing is all the more necessary since Article 1 of Decree No. 2011-111 specifies that the recording of data sensitive to the meaning of article 6 of the modified law of January 6, 1978 is permitted insofar as these data are necessary for the pursuit of the purposes defined in this article. On the legal regime applicable to the processing The Ministry considers, given the purposes pursued by the

processing, that it falls under the provisions of Title III as well as Title IV of the law of 6 January 1978 as amended. In this respect, he indicated that since LRPGN processing is the only tool for drafting all the procedures carried out by the national gendarmerie, it is likely to allow the drafting of legal and administrative procedures concerning terrorism, and more broadly to all attacks on the fundamental interests of the Nation as defined by Title 1 of Book IV of the Criminal Code. Firstly, the Commission recalls that the determination of the applicable legal regime must be made with regard to the purpose of the processing and the conditions implementation of it and not with regard to the nature of the data. While it emphasizes that the LRPGN processing is indeed intended to relate to procedures of a very diverse nature, some of which are considered to be particularly sensitive, it nevertheless considers that the processing allows, in any event, the prosecution of criminal offenses, for through the procedures carried out and at the very least for those which are of a judicial nature. It notes that the purposes pursued by the LRPGN processing mainly allow the drafting of legal and administrative procedures, and that therefore, the objective pursued by the processing is not likely to affect State security. As such, it considers that only the provisions of Titles I and III of the law of 6 January 1978 as amended should apply to LRPGN processing. On the retention period of data Article 3 of the draft decree provides that the data to be personal character and information mentioned in article 2 are kept for six years from the transmission of the procedure to the competent judicial or administrative authority. As a preliminary point, the Commission recalls that it had emphasized in its deliberation no. closure of the latter and its transmission to the competent authorities. It had also noted that once the procedure was closed, it was impossible, even in the case of a new document drafted under the same procedure number, to find this information. The Commission notes that the Ministry intends to modify these provisions in order to allow the retention of this data for a period of six years in order to facilitate the reopening of an investigation during the limitation period for public action in tort. If it notes that the procedure is archived from the date of its closure, the latter is qualified as current by the ministry and will in practice allow all the soldiers of the unit within which the procedure was established to access these procedures through an electronic document management (EDM) function. It therefore considers that this provision amounts to setting the data retention period for a period of six years, in the absence of measures governing the definitive archiving of these procedures. The Commission points out that the LRPGN, which has intended to concern all the procedures falling within the competence of the national gendarmerie, relates, in essence, to very varied procedures, which are not all likely to relate to offenses of a criminal nature. It also notes that the Ministry did not intend to modulate this duration with regard to the nature of the offenses concerned or with regard to the data collected in the context

of administrative procedures. It specified that the projected duration must allow it to be able to respond to additional requests from the authority whose decision would be contested, and this, insofar as they are regularly the subject of legal appeals. In general, the Commission considers that the data retention period cannot be fixed, in principle, with regard to the sole limitation period for public action, without consideration of the purposes for which they are processed, and in compliance with the provisions of Article 4-5° of the amended law of January 6, 1978. More specifically, it emphasizes that the ministry has not demonstrated, on the one hand, the need to keep these data beyond their transmission to the competent authority, and on the other hand, for a period not exceeding that necessary with regard to the purposes for which they are processed. In this context, it has reservations about the advisability of storing this data as a preventive measure, and considers the duration set by the draft decree to be disproportionate. In any event, and as it pointed out in its opinion of 11 October 2012 on the software for drafting national police procedures, the Commission considers that, if the ministry intends to archive the data at the end of their transmission to the competent authority, the draft decree should be amended in order to specify that access, necessarily limited, to the data within this period, and once the procedure has been transmitted to the competent authority, cannot be carried out only in a strictly framed manner. Finally, the Commission points out that the data is deleted manually at the end of the six-year period. In this regard, the ministry specified that an automatic reminder functionality was integrated on July 1, 2020, to signal, visually in the traditional procedure management tab, the detailed list of procedures that have expired by the deadline. custody, applicable to proceedings closed after that date. The Commission nevertheless considers that this measure is insufficient to ensure the systematic deletion of the data, at the end of the retention period, and considers that, given the nature of the processing and the volume of data to be processed, it appears necessary to put in place an automatic data deletion procedure. In the meantime, it considers in any event that measures, in particular organizational measures, to ensure the effective deletion of the data must be implemented. In this regard, it takes note of the clarifications provided by the Ministry according to which the unit commander checks his procedures register daily, the immediately higher hierarchical level, which has a more global vision, checks and, if necessary, orders the erasure , and finally, in terms of internal control, the IT and liberties referents of the gendarmerie groups and regions also exercise control over the effective implementation of the deletion procedure. It considers this protocol to be satisfactory and calls on the Ministry to ensure that it is disseminated and complied with. On the changes made to the other conditions for implementing processing On the categories of data collected As a preliminary point, the Commission notes that First, the appendix to the draft decree provides that data may be collected,

indiscriminately, relating to natural persons who are victims, defendants, complainant witnesses or who are the subject of an investigation or investigation to find the causes of death or disappearance in in the context of legal proceedings. Article 6 of the aforementioned Directive 2016/680 provides that the controller shall, where appropriate and as far as possible, make a clear distinction between personal data of different categories of persons concerned, in particular in order to distinguish data relating to persons suspected, convicted, victims, or even considered as t ers. In this respect, the Ministry has indicated that it considers that the distinction of data likely to be collected according to the status of the person concerned (responsible, or victim for example) is not relevant. The Commission nevertheless considers that, in addition to compliance with the provisions of the aforementioned article, such a distinction would have made it possible to ensure the minimization of the data that can be collected with regard to each person, as is currently provided for concerning the national police procedure drafting software (LRPPN 2). In any event, while the Commission notes that the provisions governing the LRPGN already provide for the collection of data relating to victims, it recalls, given the significant development in the data that may be collected, that it considers that it is essential that the criteria relating to the need for the collection of these categories of data be strictly respected. Furthermore, insofar as these data are intended to be kept for the same duration as the information relating to the persons implicated, it emphasizes the importance of ensuring strict control of these durations and, more specifically, in the hypothesis of the collection of information relating to minors.Secondly, point I-1° of the appendix to the draft decree, which governs the data likely to be collected, provides for the recording of photographs.At this In this regard, the Commission notes that the collection of this data is only provided for in the context of legal proceedings and insofar as they may, according to the Ministry, be necessary for the investigation, whether for example in the context of attacks to persons or property (traces of blows, photos of the stolen vehicle), or to allow the identification of a deceased or missing person. The Commission also notes that the draft decree does not provide for the possibility of using a device facial recognition and recalls in any event that, in the event that the processing uses a biometric template, this would in itself constitute data falling within a category distinct from those listed in the draft decree, requiring the modification of the decree governing the LRPGN, after referral to the Commission, under the conditions provided for in article 89 of the amended law of 6 January 1978. Thirdly, the appendix to the draft decree provides for the possibility of collecting the fingerprint form . In this respect, the ministry specified that this form must constitute an aid for the investigator and that it is used to inform the ten-print record, which can be a component of the report of a natural person. In this respect, it relates to the appearance of each finger and must make it possible to indicate their

state (normal / damaged / bandaged / cut). He also specified that this form did not correspond to the report sent to FAED. For the purposes of clarity, the Commission considers that this category of data could be specified in the draft decree.On the exercise of rightsArticle 7 of the draft decree sets out the procedures for exercising the rights of data subjects, with regard to both the provisions of Title III of the law of January 6, 1978, as amended, and those of its Title IV. considers that only the provisions of Title III of the aforementioned law are intended to apply with regard to the exercise of their rights by the persons concerned, insofar as the file pursues purposes considered as not relating to security of the State or defence.Secondly, concerning the information of the persons concerned, the Commission notes that this will be carried out by the publication of the regulatory act as well as the list of the e All the processing implemented by the Ministry of the Interior on its website. In this respect, it regrets that the information of the persons concerned is not provided directly to them when this is materially possible. On security measures The Commission notes that access to data is limited to duly authorized users due to their attributions and within the limits of the need to know. These users will be authenticated via an identifier and password pair initially, then, once the agent cards have been made available to users, via this card, which enables strong authentication. The Commission notes that the Ministry foresees that the professional cards will only be deployed when the future LRPGN-NG processing is implemented. With regard to password authentication, the Commission notes that the measures planned by the ministry appear to comply with deliberation no. 2017-012 of 19 January 2017 adopting a recommendation relating to passwords, in terms of length and complexity. The Commission notes, however, that the Ministry does not plan to implement a timeout for access to the account after several failures, and/or a mechanism to guard against automated and intensive submissions of attempts and/or blocking of the account, and therefore invites the Ministry to provide additional measures of this type. However, it notes that the Ministry has specified that authentication on the terminals used for LRPGN processing is done through the intranet network of the gendarmerie and that the computer security measures of this network make it possible to protect against automated submissions. and intensive connection attempts. Article 6 of the draft decree provides that the operations of collection, consultation, modification, communication, linking, erasure of data and processing information are subject to a record including the identification of the author, date, time and nature of the operation. This information is kept for six years. The Commission recalls that it considers that the fact of keeping, for security purposes, these traces for a period exceeding six months, is in principle disproportionate, unless the Ministry demonstrates that this retention period makes it possible to reduce the risks burdening the data subjects and who cannot be processed by another measure. automatic

analysis of traceability data. The Commission nevertheless considers that the implementation of such measures appears to be essential because the only way to guarantee rapid and effective detection of cases of error or misuse of the planned processing. Finally, the Commission recalls the need to implementation of state-of-the-art encryption solutions, both for flows and stored data, throughout the life cycle of the data. Indeed, these measures are the only solution to ensure the confidentiality of data during all phases of processing, from input to archiving. The Commission takes note of the elements transmitted by the ministry and confirming the implementation of an encryption solution between the server of the unit and the central server and, more generally, within the framework of the exchanges implemented between all the systems .The other security measures do not call for comments from the Commission. It nevertheless recalls that the security requirements provided for in Article 99 of the amended law of 6 January 1978 require the regular updating of the AIPD and its security measures with regard to the regular reassessment of risks. The President Marie-Laure DENIS