

Deliberation 2022-004 of January 20, 2022 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Tuesday January 25, 2022 NOR: CNIX2202360V Deliberation n° 2022-004 of January 20, 2022 providing an opinion on a draft decree amending decree no. 2020-551 of May 12, 2020 relating to the information systems mentioned in article 11 of law no. 2020-546 of May 11, 2020 extending the state of health emergency and supplementing its provisions (request for opinion no. 22000408) The National Commission for Computing and Liberties, Seizure by the Minister for Solidarity and Health of a request for an opinion concerning a decree amending decree no. 2020-551 of May 12, 2020 relating to the information systems mentioned in Article 11 of Law No. 2020-546 of May 11, 2020 extending the state of health emergency and supplementing its provisions; 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 or GDPR); Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms; After hearing the report of Ms Valérie PEUGEOT, Commissioner, and the observations of Mr Damien MILIC, Deputy Government Commissioner, Issues the following opinion: The Commission has been seized of a draft decree aimed at modifying the provisions of the decree n° 2020-551 of May 12, 2020 applicable to the SI-DEP system, following the adoption of the law strengthening the tools for managing the health crisis and modifying the public health code. The modifications made aim to: - add a purpose for the processing in order to allow the competent authorities to adapt the duration of the individual measures of quarantine or placement and maintenance in isolation provided for in 3° and 4° of Article L. 3131-15 and in 2° of I of Article L. 3131-1 of the same code, and to specify the data that can be processed in this context as well as the persons authorized to receive them; - specify that a proof of absence of contamination by covid-19 or a certificate of recovery cannot be used in order to meet the obligations mentioned in II of article 1 of law n° 2021-689 of May 31, 2021 and in Articles 12 and 13 of Law No. 2021-1040 of August 5, 2021 only in certain specific cases by adding terms where applicable; - allow the addition of certain information relating to vaccination within the QR codes generated by SI-DEP. The Commission recalls that the intervention of the legislator for the implementation of the SI-DEP and Contact Covid information systems is justified by the need to arrange a derogation from the provisions relating to medical secrecy guaranteed by the CSP. This arrangement has the effect of leading to the sharing of sensitive data, likely to concern the entire population, between various categories of actors. The Commission stresses that the invasion of privacy by the measures which necessitate this processing of personal data is only admissible if

they constitute the appropriate response to slow the spread of the epidemic. In particular, with regard to the use of tools and information systems in the context of the fight against covid-19, and as it has repeatedly pointed out, the Commission invites the Government to scientifically assess the contribution of these tools to its health policy and to send it this assessment, which would make it possible to better assess the proportionality of the treatments put in place. With regard to the purpose of adapting the duration of quarantine and isolation measures :Article 1 of the draft aims to modify Article 8 of Decree No. 2020-551 in order to provide that the centralization of the results of virological or serological screening examinations for the SARS-CoV-2 virus in SI-DEP allows competent authorities to adapt the duration of the individual measures of quarantine or placement and maintenance in isolation provided for in 3° and 4° of Article L. 3131-15 and in 2° of I of Article L. 3131-1 of the same code. These provisions refer: - for article L. 3131-15-I 3° and 4° of the CSP, to the ability of the Prime Minister to order measures aimed at quarantining people likely to be affected or placement and maintenance in isolation of affected persons, by decree issued on the report of the Minister responsible for health, and for the sole purpose of guaranteeing public health in the territorial constituencies where the state of health emergency is declared; - for article L. 3131-1 2° of the CSP, to measures of quarantine or placement and maintenance in isolation, under the conditions provided for in II of articles L. 3131-15 and L. 3131-17 of the same code. The addition of this purpose, which is the necessary consequence of the provisions provided for by law, leads to the introduction, alongside the health purposes, of a purpose linked to the reduction, maintenance or extension of the duration of measures quarantine and isolation through verification of test results. It notes that this purpose is not of a repressive nature, as confirmed by the Ministry, and therefore falls under the GDPR. be distinguished, as far as possible, from those allowing the exercise of other public service activities. In this case, the ministry intends to derogate from these principles due to an exceptional health context. The Commission considers that due to the urgency and the very close proximity of the data currently present in SI-DEP with those which the prefectural services will need to adapt the duration of quarantine and isolation measures, the creation of a new file does not seem to be suitable. The Ministry indicated, after specifying that the data from the SI-DEP processing will only be used for the purpose of reducing, maintaining or increasing the duration of the measures, that the exact nature of their adaptation, their systematic nature and their implementation timeframe could be subject to change depending on health recommendations and, where applicable, territorial specificities. Asked about the procedure according to which these adaptations could take place, the ministry indicated that the modalities were being defined at interministerial level. The Commission therefore requests that the modalities according to which these adaptations could be

made be determined very clearly and exhaustively . In any case, it recalls that the use of SI-DEP will be limited, in this context, to the ability to reduce, maintain or increase the duration of a quarantine or isolation measure, and excludes, generally, the monitoring of compliance with this measure. clearances. The Commission also asks to be informed of these procedures. With regard to the data processed: The draft decree provides for the addition of a 6° to II of article 10 of the decree in order to establish the list of data recipients recorded in the processing, by adding the agents of the prefectural services individually designated and specially authorized and to draw up the list of the categories of data of which they would be made recipients with a view to adapting the duration of the quarantine or isolation measures. The data concerned are: - the identification data of the person who has been the subject of a screening examination, including in particular the registration number in the national directory for the identification of natural persons (NIR); - the contact details of the person or a trusted person; - the technical characteristics of the sample; - information relating to the results of virological or serological screening tests. The Commission questions the need for prefectural agents, in view of the purposes pursued for the exercise of their missions, to have all the data listed in the decree in the following categories: data relating to the technical characteristics of the direct debit and information on virological or serological screening tests. Indeed, it seems that the objective pursued, namely the adaptation of the duration of a measure according to the dates and results of virological screening examinations, could be achieved by having access to information allowing determine the date, the result of the test and, in the event that this information is relevant with regard to the adaptation methods envisaged, the type of virological examination carried out (antigenic or RT-PCR), of a person subjected to a quarantine or isolation measure. In this respect, the Commission notes that the Ministry has undertaken to modify the draft decree so that the data accessible to prefecture officials is limited to the date and time of the sample, necessary to assess the validity of the tests, at the type of examination carried out and the result of the examination. The ministry clarified that the NIR could be treated as a national health identifier (INS) in SI-DEP. The Commission draws the Ministry's attention to the fact that the NIR, treated as INS, may differ from the NIR used to identify persons in processing carried out for other purposes (for example in the case of processing of the policyholder's NIR for the treatment of a beneficiary, or treatment concerning minors, for which the NIR used may be that of one of his legal representatives). According to the details of the ministry, the new purpose, implemented within the framework of the draft decree and aimed at allowing public authorities to adapt the duration of individual quarantine or isolation measures, involves the processing of the NIR in the sole purpose of certifying the identity of persons. The Commission takes note of this. It

nevertheless invites the Ministry to ensure that the agents of the prefectural services will not be recipients of the NIR as INS that may appear in SI-DEP, in the event that it differs from the NIR used outside the scope of the decision. in health and medico-social care. It also invites him to ensure that the NIR of the legal representatives of minors will not be processed by the agents of the prefectural services in order to identify them, in the event that they would be subject to a measure of quarantine or isolation. .It considers that such access would not fall within the framework of the legislative and regulatory provisions applicable to processing including the INS, provided for by Articles L. 1111-8-1 and R. 1111-8-1 et seq. of the CSP. Article 9 modified by the draft decree provides that the QR codes generated by SI-DEP may contain the data relating to the vaccination mentioned in 2° of article 9 of the decree (vaccination status, name of the vaccine and date of the injection(s). The ministry specified that such an addition aims to make it possible to establish a valid vaccination pass in various cases currently provided for by the law strengthening the tools for managing the health crisis and modifying the public health code. The Commission notes that, Initially, only the mention of primary vaccination (via the acronym PV) will be integrated in order to allow the issuance of proof of commitment to a vaccination scheme, valid as proof of vaccination status for the duration necessary for the completion of this scheme. The drafting of the draft decree will, however, make it possible to make other use cases envisaged by the texts operational, such as the accumulation of supporting documents for certain places. The Commission considers that the limitation of information relating to vaccination to that mentioned in 2 ° of article 9 of the decree is relevant with regard to the objectives pursued. With regard to the recipients: The draft article 10-II-6° of the decree adds the individually designated and specially authorized agents of the prefectural services to the recipients of certain SI-DEP data, within the limits of their need to know; it is not envisaged that these agents transmit this information to third parties. The Commission recalls that only these agents should be able to access data concerning persons subject to a quarantine or only to data concerning persons subject to a quarantine or isolation measure in progress at the time of the verification and falling within their competence, determined according to that of the prefect to whom they depend, empowered to take the measure concerned , defined in Article R. 3131-19 of the CSP, and, where applicable, depending on the place of performance thereof. Finally, in the event that these data should be processed other than a simple consultation by the prefectural services, such as storage, the Commission recalls that this duration may not exceed that strictly necessary for the adaptation of the measure and the delivery of the related decision, in accordance with the GDPR and the a Data Protection Act. On the information of the people: The information of the people concerned by this processing and the modifications which are made to it, with regard in

particular to the device and the procedure for adapting the duration of the quarantine or isolation measure, constitutes an essential guarantee to enable them to have the necessary information and the means to assert their rights. In this regard, the Ministry specified that the information notices relating to SI-DEP processing will be supplemented with the new purpose pursued by the processing, as well as the recipients of the data. The Commission takes note of this. The Commission also takes note that the Ministry has undertaken to ensure that the information provided for in Article 12 of the decree is sent to persons subject to the quarantine or isolation measure and to the trustworthy persons referred to in Article 9-3° of the decree at the time of the pronouncement of the measure. department to also inform the general public of the changes made to the SI-DEP processing and the procedures for adapting the duration of the quarantine and isolation measures. On the security of the SI-DEP system: The system, set up in emergency and not intended to be implemented in a sustainable manner, has seen its existence extended and its implementation methods regularly modified due to the health crisis. The Commission points out that the Ministry has undertaken to update the impact analysis on data protection relating to SI-DEP processing prior to the implementation of the changes provided for by the draft decree and has sent it an EBIOS-type risk analysis. The Commission recalls that the impact analysis must be updated prior to the implementation of the modifications envisaged by the draft decree submitted to the Commission. More specifically, the Commission recalls to the Ministry that the persistence of the pandemic requires that reinforced security measures be put in place, in a logic of defense in depth. The President, M.-L. Denis