Deliberation 2021-009 of January 7, 2021Commission Nationale de l'Informatique et des LibertésNature of the deliberation: OpinionLegal status: In force Date of publication on Légifrance: Tuesday November 09, 2021NOR: CNIX2130633VDeliberation n° 2021-009 of January 7, 2021 providing an opinion on a draft decree relating to the processing of personal data known as the “National automated genetic fingerprint file” and amending the provisions of the Code of Criminal Procedure (request for opinion no. 19017520)The National Commission for Computing and Liberties, Saisie by the Minister of the Interior of a request for an opinion concerning a draft decree relating to the processing of personal data called the National Automated File of Genetic Fingerprints and amending the provisions of the Code of Criminal Procedure; 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 (GDPR); Having regard to Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU; 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 crime criminal proceedings, investigation and prosecution in this area or the execution of criminal penalties, and on the free movement of such data and repealing Council Framework Decision 2008/977/JHA; Considering the civil code, in particular its article 16-11; Having regard to the Code of Criminal Procedure, in particular its Articles 706-54 to 706-56-1-1; Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms; Having regard to Law No. 2010-242 of March 10, 2010 aimed at reducing the risk of criminal recidivism and laying down various provisions of criminal procedure; Having regard to Law No. 2011-267 of March 14, 2011 on orientation and programming for the performance of internal security; Having regard to Law No. 2016-731 of 3 June 2016 strengthening the fight against organized crime, terrorism and their financing, and improving the efficiency and guarantees of criminal procedure; Having regard to Law No. 2019-222 of March 23, 2019 on programming 2018-2022 and reform for justice; Having regard to decree no. 2012-125 of January 30, 2012 relating to the extrajudicial procedure for the identification of deceased persons; Considering the

decree n° 2019-536 of May 29, 2019 taken for the application of the law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Having regard to the decree of July 6, 2016 determining the number and nature of the non-coding DNA segments necessary for the realization of parenthood reconciliations in the national automated file of genetic fingerprints; After having heard Mrs. Sophie LAMBREMON, commissioner, in her report , and Mr. Benjamin TOUZANNE, Government Commissioner, in his observations, Issues the following opinion: The National Automated Genetic Fingerprint File (FNAEG) is a file shared by the national police and gendarmerie. This is a judicial police file which was originally created to keep the genetic fingerprints of persons implicated or convicted of certain offences, in order to facilitate the identification of the perpetrators in the event of repetition. These offences, listed in article 706-55 of the Code of Criminal Procedure (CPP), were initially limited to particularly serious crimes and were subsequently extended. The file also contains genetic fingerprints collected during the proceedings judicial investigation of the causes of a person's death, or of a disturbing disappearance, as well as identification procedures provided for by article 16-11 of the civil code. In this respect, the Commission emphasizes the current ambiguity of Article 706-54 of the CCP and the reference to Article 16-11 of the Civil Code, as regards the scope of the extra-judicial procedures referred to, and considers that, at any the least, the text of this article should eventually be clarified. Within the framework of procedures for identifying corpses or searching for missing persons, the fingerprints used are then mainly those of unidentified corpses, in order to verify whether their identity is not contained in the database, or those of relatives of the missing person, in order to compare them with an unidentified corpse or with biological traces which it is suspected may come from the missing person, whose genetic fingerprint is not itself present in the database: the comparison with the fingerprints of people in his family make it possible to determine the probability that the corpse is that of the person sought or that the trace analyzed comes from him. The FNAEG also contains fingerprints from biological traces taken during these procedures (for example, at the place of commission of an offence). The conditions for implementing the FNAEG, on which the Commission has ruled on several occasions, are provided for in legislative articles 706-54 to 706-56-1-1 of the CPP, as well as R. 53-9 to R. 53-21 of the same code. The Commission underlines two important guarantees provided by the legislator for the creation of this file: on the one hand, the fingerprint is only made from non-coding segments of DNA and it is therefore not possible in principle of inferring physical characteristics from the genetic data stored in the database; on the other hand, insofar as the file associates the use of the genetic information contained in the database with several distinct purposes (identification of the perpetrator of an offence, identification of a corpse, assistance in the search for a missing person), the

aforementioned article 706-54 provides that the data recorded in an extra-judicial context shall be recorded separately from that of the other genetic fingerprints kept in the file. Given the purposes pursued by the processing, which is partly implemented for the purposes of preventing and establishing criminal offenses within the meaning of Directive 2016/680 of 27 April 2016 referred to above, and which also pursues civil purposes and administrative, the Ministry considers that it falls within the scope of both the GDPR, on the legal basis of the mission of public interest, and the aforementioned directive, transposed in Title III of the law of January 6, 1978 as amended. Commission points out that the FNAEG, the creation of which was surrounded by singular circumstances marked by the commission of serious offences, constitutes processing likely to be considered, by nature and in particular because of the data it contains, as more prejudicial to the freedoms individual than other judicial police processing. It notes that the successive changes relating to the scope of the FNAEG, as well as some of its conditions of implementation, have led to it being made into a very large file, in which highly identifying data is recorded. It particularly draws the attention of the government and the legislator to the technique of kinship research, which consists of inferring from the data present in the file relating to certain persons, information relating to other persons which, as such, are not necessarily intended to be included. This extension of the scope of the file increases the invasion of the privacy of the persons who are thus identifiable. The Commission considers that the use of this practice, coupled with particularly sensitive data, must be subject to a strict proportionality check. The Commission therefore recalls that it is important that the use of the FNAEG be strictly regulated . It has thus always considered that the collection of genetic data should be accompanied by strong guarantees, in order to ensure strict proportionality between the purpose pursued by this file and the processing of this data of a particular nature.In this context, the Commission notes that the amendments envisaged by the draft decree aim in particular to allow the application of legislative provisions successively adopted since 2010, the purpose of which was to extend the purposes of the FNAEG (collection and use of genetic fingerprints for the purposes of identification of unidentified corpses, victims of natural disasters or missing persons whose death is assumed, outside of any criminal proceedings), as well as to develop its various functionalities. The draft decree also aims to take into account both of the decisions of the Constitutional Council and of those of the European Court of Human Rights (ECHR) in matters of conservation ation of data. Generally speaking, the Commission considers that these latest amendments make it possible to strengthen the guarantees offered with regard to the protection of personal data, in particular by modulating the retention periods of data according to the age of the persons concerned and by allowing also an early erasure of the data. It nevertheless notes that other provisions of

the draft decree, which substantially modify the FNAEG, give rise to major reservations. They relate more particularly to: the significant extension of the perimeter of relatives of a missing person whose data can be recorded in the file; the concern about the use of this data for kinship research as well as the methods of comparing these fingerprints within the FNAEG; the creation of a new common identifier to several police files. On the search for relatives provided for in article 706-56-1-1 of the CPP Draft article R. 53- 10-IV provides that when the requirements of an investigation or information concerning one of the crimes provided for in article 706-55 require it [such as certain thefts, acts of terrorism or even sexual offenses] it is possible to make a comparison between the genetic fingerprint recorded in the file established from a biological trace from an unknown person, with some of the fingerprints recorded in the treatment (genetic fingerprints of persons declared guilty or irresponsible, as well as those of persons against whom there are serious or concordant indications making it likely that they have committed an offence). The purpose of such a search is to determine not only whether the fingerprint of the person sought is contained in the file, but also whether it is directly related to one of the fingerprints in the file (kinship search). This option is provided for in article 706-56-1-1 of the CPP and was introduced by article 80 of the aforementioned law of June 3, 2016. The law limited the use of this research to procedures relating to one of the crimes provided for in article 706-55 of the CPP and also limited the genetic fingerprints recorded at the FNAEG which can be used, by excluding all data collected in an extra-judicial framework. If the Commission takes note of the clarifications provided by the Ministry according to which this possibility of research into kinship constitutes an element of orientation of the investigation which requires, in any case, the realization of additional investigations, it nevertheless emphasizes that the measures envisaged are likely to entail serious risks for the privacy and protection of persons who may be targeted on the basis of partial genetic matches. The Commission considers that these risks, relating in particular to the fact that such a comparison necessarily includes a margin of error, are liable to lead, where appropriate, to significant consequences p for the person, who could for example be implicated in legal proceedings on this basis and who must therefore be precisely measured. It also recalls that the match made in the context of such a search cannot, on its own, produce legal effects on the person concerned and affect him significantly, in particular with regard to the risks associated with the margin of error of these types of research. On the collection of genetic data relating to the ascendants, descendants and collaterals of missing persons, and their processing within the FNAEG, in particular by research in kinshipFirstly, with regard to the collection of data, article 3 of the draft decree aims to modify article R. 53-10 of the CPP relating to the genetic fingerprints that can be recorded in the FNAEG. The provisions relating to the recording of biological

samples taken from the relatives of a missing person, currently limited to ascendants and descendants, have been extended to all collaterals. The ministry specified that at the present time, and in the state of advanced technologies in this area, the identification of a person is in principle only possible from the genetic fingerprint of the ascendants or descendants in the first degree. The modification of the decree therefore seems mainly motivated by the desire to anticipate possible scientific developments, likely to offer greater potential for identification. In this context, the Commission is against the decree authorizing this collection. The ministry however objected that, in particular when the missing person has neither ascendant nor descendant, the collection of the fingerprints of the collaterals is the only one which can help the search or the identification of the person and can provide useful indications. In this context only, the Commission considers that the decree could authorize its collection, in this sole hypothesis and for use cases where such usefulness is proven. In the alternative, the Commission insists that the draft decree make explicit that precisely cover the concepts of ascendants, descendants as well as collaterals and the degrees of filiation concerned, even if this collection does not present any coercive character. , the draft decree provides for two levels of comparison of the fingerprints of the ascendants, descendants and collaterals of a missing person with those recorded in the FNAEG. In the first-level comparison, the fingerprints of relatives are only compared with data from the FNAEG relating to missing persons, which generally come from unidentified corpses or traces found in a place and which it is believed can be linked to the missing person. At the second level, the biological fingerprints of the relatives of the missing person can, as long as they are kept in the file, also be compared with the data recorded in the file or subject to comparison with the file and for all its purposes. The Commission notes that with regard to second-level consent, for data relating to relatives and collected in a judicial context, the Ministry had initially, in the draft sent to the Commission, not intended to exclude from this comparison the biological traces from unknown persons also collected in a judicial context, thus allowing a comparison with the entire file. As a result, a person who has one day voluntarily consented, in a legal context, to the recording of his data for the purpose of finding a relative may find himself implicated in a case. In addition, by means of kinship research, the imprint of the loved one of the missing person can lead to directing the investigation, within the framework of a legal procedure, towards another person of his family, distinct from the person disappeared and whose fingerprints had not been found. While the Ministry notes that the provisions of the CPP in force do not preclude this possibility, the Commission nevertheless emphasizes that they do not expressly allow it and that, in the sense Conversely, article 706-54-2° of the CPP provides that the genetic fingerprints collected in an extrajudicial context are the subject of a separate

recording from that of the other genetic fingerprints kept in the file, which seems to imply a partition between the purposes for which this data is processed. It considers that the draft decree introduces very significant modifications to the FNAEG on this point, which call for the following observations. of the FNAEG, concerning persons against whom there is no suspicion of the commission of an offence. On the other hand, the Commission notes that these methods of comparison lead to an extension of the purposes for which the data relating to these persons are collected , and strictly governed by the draft decree, namely the identification of missing persons and considers that the relevance of such use, beyond the identification of only missing persons, has not at this stage been demonstrated. Finally, the Commission considers that it is not possible to attract to the FNAEG in this way all the relatives of a person implicated in a legal case, for example, who are then potentially identifiable through kinship research. However, the only reason for which this part of the population finds itself identifiable, via the FNAEG, during legal proceedings, would be due to the fact that one of their relatives disappeared at some time in the past and that the traces of their family members collected at that time are still retained in the file. This subsequent use of the data is entirely separate from the purpose for which they were collected, and amounts to creating, by destination, a genetic file making it possible to identify a large part of the population. In view of the foregoing, the Commission requests therefore the Ministry to withdraw from the draft decree the second level of comparison to which the relative of a missing person can consent when his genetic fingerprint is registered in the FNAEG. In any event, it wonders about the possibility of using a regulatory-level standard to regulate, where appropriate, this level of comparison and research within the FNAEG. In response to the Commission's observations previously set out, the Ministry has undertaken to remove from the second-level consent the possibility of comparing the genetic fingerprints of the relatives of a missing person with the biological traces from unknown persons found at an offense scene, but to maintain the comparisons with the fingerprints suspected or convicted persons. The Commission takes note of this but maintains, for the remainder, its request for withdrawal. On links with other processing and the use of a unique identification number object of interconnections, comparisons or links with the following processing: the processing implemented by the central service for the preservation of biological samples mentioned in Article R. 53-20-1 of the CPP, the processing mentioned in article R. 15-33-66-4 of the CPP (Cassiopée), the processing mentioned in article R. 40-23 of the CPP (the processing of criminal records, TAJ), the automated processing used by persons natural or legal entities approved under Decree No. 97-109 of February 6, 1997 having carried out the analyzes under the conditions provided for in Article R. 53-18 of the CPP, the automated processing of fingerprints and fingerprints (FAED) , software for drafting

procedures for the national police (LRPPN) and the National Gendarmerie (LRPGN), the Schengen Information System (SIS), the international DNA gateway of the international criminal police organization Interpol, the file of wanted persons (RPF). It also provides that some of these processing operations may include a unique identification number with the national automated genetic fingerprint file. The ministry specified that the majority of these connections will be made manually. More specifically with regard to Cassiopée and TAJ processing, the Ministry indicated that they must allow the judicial authority to update the FNAEG application when, following a person's request, it authorizes the deletion Datas. It was also specified that these links are part of a process of simplification and reliability of the judicial and penal chain and concern, in any case, only files which share the same purpose of judicial police and more specifically for the identification of perpetrators of offenses or persons (missing persons, unidentified corpses). The ministry indicated that the only data used for this purpose in the FNAEG is the common identifier, known as IDPP, associated with the genetic profile alone. The draft decree provides in this respect that this identification number may be subject to registration in the processing, with regard to data associated with biological samples of certain categories of persons. The ministry specified that the use of this identifier must make it possible to make the identity of the person more reliable and to make a comparison on the basis of this number, with other processing operations. He indicated that this number will be generated automatically by the procedures drafting software and will only be transmitted in the FNAEG in the aforementioned hypotheses (judicial framework only). As a preliminary point, the Commission notes that the use of such an identifier could be justified by making the data relating to an individual in different police files more reliable and thus make it possible to remedy the difficulties encountered with regard to the accuracy Datas. Indeed, it considers that it is necessary for the links between the files mentioned to be particularly reliable, given the significant consequences that errors related to homonyms, the presence of assumed names, or the the existence of files corresponding to information relating to an unknown person. Although the Commission does not question the possible usefulness that such a possibility could represent, it nevertheless recalls that the use of an identifier, attached to a person, and allowing it to be identified within different files (even if this number is not unique), entails significant risks that must be accompanied by strong guarantees. The Commission considers that the Ministry does not justify the proportionality of the use of such an identifier with regard to a possible objective of making the identity of individuals more reliable and/or of their identification during legal proceedings. In the state of the elements provided, and in particular the fact that this number will in reality be attached to a procedure and not to an individual, it strongly questions, beyond the very principle of the implementation of this identifier, on the operational usefulness associated

with the collection of this data (like the procedure number for example). A fortiori, it emphasizes that the Ministry intends to associate such a number with persons who have been definitively declared guilty, with missing persons, or even with their ascendants, descendants or collaterals without the need to use it, particularly with regard to these people, be demonstrated. The Commission therefore considers that the collection of this number is disproportionate to the purposes for which the information relating to these people is processed. It notes above all that the collection and the use made of this identifier are well beyond the regulation of the FNAEG alone, since it will be common to all the files indicated. In this respect, the Commission considers that such a development, which involves major challenges in terms of civil liberties, cannot be apprehended solely through the modification of the conditions for implementing the FNAEG but must, if necessary, be include in-depth reflection so as to identify precisely the objective pursued as well as the consequences induced by such a modification, on all the processing concerned, implemented in the criminal sphere. It recalls in this respect that such changes would imply the modification of the provisions governing these various files so that this identifier appears in the acts regulating each of them.On the duration of data retentionThe provisions relating to the duration of data retention are modified in a substantial way, in particular in order to take into account the reservation of interpretation of the Constitutional Council formulated in its decision of September 16, 2010. In ruling on the legislative provisions relating to the FNAEG, the Council considered [that] it is the regulatory power to proportion the retention period of this personal data, taking into account the purpose of the file, to the nature or seriousness of the offenses concerned while adapting these methods to the specificities of juvenile delinquency. Article R. 53-14 of the CPP as amended by the draft decree provides for specific storage periods for data relating to minors, the list of the most serious offenses which lead to an increase in storage periods and new methods early cancellation in the event of a favorable outcome for the parties concerned. Insofar as the Commission has always considered that the processing of data relating to minors calls for specific guarantees, it considers that the new retention periods defined comply with the provisions of article 6-5° of the law of January 6, 1978 as amended as well as those of the GDPR, in accordance with the observations made by the Constitutional Council. First, the draft decree provides for a reduction in the principle retention period of biological traces, reducing it from forty years to twenty-five years. Nevertheless, in the event of a collection within the framework of an investigation or a preparatory instruction relating to one of the offences, exhaustively listed by the draft decree, and considered to be the most serious, it will be possible, as is currently the case , to keep this data for forty years. In the same way, the retention periods for data relating to persons against whom there are serious or

corroborating indications making it likely that they have committed an offence, as well as to persons declared guilty or irresponsible, are reduced. Thus, the data relating to these categories of people can, in principle, be kept respectively for fifteen and twenty-five years when the person is of age. The Commission considers that these durations are, in the majority of cases, relevant. It notes, however, that some of the categories of offenses cover actions of varying seriousness. This applies in particular to theft and damage or threat of damage to property. For this type of infringement, with regard to the least serious facts, a duration of 25 years could prove disproportionate and the Commission invites the Ministry to reflect on how to manage this disparity in the data, with the aim to refine the retention periods. Secondly, the draft decree expressly sets a retention period of forty years for data relating to unidentified corpses and missing persons collected in the context of judicial or extra-judicial proceedings. All data is erased when the managing department is informed of the identification of the person concerned or the discovery of the missing person. The Commission considers that this retention period, although particularly long, is relevant in view of the purposes for which the data were collected. It emphasizes that the data relating to their relatives may be kept for an identical period but that the latter may, at any time, request the erasure of their data.Finally, the Commission considers that the new durations thus defined must be applied to the stock of the data currently recorded in the FNAEG, and takes note of the ministry's commitment on this point. On the procedures for erasing data recorded in the FNAEG The procedures for erasing data at the request of the person concerned are substantially modified by the draft decree, in particular in order to take into account the case law of the ECHR, in particular the judgment M. K. against France of April 18, 2013 relating to the FAED.In the first place, these methods are modified with regard to the cases, already provided for by the legislative provisions of the CPP (resulting in part from the aforementioned law of March 23, 2019), erasing data before the end of the retention period: when e the person has been found guilty of one of the offenses mentioned in article 706-55, that he has been the subject of a decision of criminal non-responsibility after having been prosecuted for one of these same offenses or is called into question in legal proceedings in the event of serious or concordant indications, and that the retention of this data no longer appears necessary taking into account the purpose of the file (article 706-54-1) and when it is put an end to searches for identification which justified their collection in the event of extra-judicial searches for the purposes of identification (article 706-54, paragraph 6). With regard to data relating to persons declared guilty or having been the subject of a decision of criminal non-liability, the draft decree now specifies the criteria for assessing the advisability of erasing the data or keeping them in the FNAEG as well as the period at the end of which a request to this effect can be made. These criteria, used in

particular within the framework of the FAED and other judicial police files, do not call for any particular observation on the part of the Commission. biological traces, the draft decree indicates that it may be carried out on the instructions of the public prosecutor, the investigating judge or at the request of the judicial police officer as soon as it is established that their conservation does not seems more necessary given the purpose of the file. The Commission invites the Ministry to specify the criteria for assessing this need, similar to what is currently provided for in draft Article R. 53-14-2, and takes note of the clarifications provided by the Ministry according to which these criteria may, for example, relate to the resolution of the case, the identification of the author, or even the loss of the criminal nature of the act in question. Secondly, and in order to comply with the aforementioned decision of the ECHR, the draft decree provides for early deletions, ordered ex officio by the public prosecutor or at the request of the person concerned. the data relating to the person are automatically erased at the request of the interested party. By not providing for the possibility for the public prosecutor to keep this data in the FNAEG for reasons related to the purposes assigned to the processing, the draft decree makes a distinction based on the existence or not of a conviction. While the Commission considers that this eliminates the risk of stigmatization of persons who have not been found guilty of an offence, as noted on several occasions by the ECHR, it nevertheless recalls that this erasure is by law, and does not must not be conditioned at the request of the interested party, in accordance with the provisions of article 706-54-1 of the CPP. The Commission considers that the possibility of the data being erased automatically constitutes an important guarantee and therefore invites the Ministry, which has confirmed that the decree should be interpreted in this way and that the erasure at the request of the person concerned provides is not the only method allowing the erasure of data, to clarify the draft decree on this point. Finally, it recalls that the difficulties put forward by the Ministry aimed at obtaining information on the legal follow-up to a case cannot lead to emptying of its substance the possibility for a person to have his data automatically erased. Erasure on request should therefore only play a subsidiary role, in the event of a one-time malfunction. are erased at the request of the person concerned, unless the public prosecutor prescribes their retention for reasons related to the purpose of the file, with regard to the elements mentioned above. grounds, that is to say those which, in general, do not make it possible to set aside the responsibility of the person concerned in the commission of the acts, the Commission considers that they should be able to give rise to erasure within the common law conditions provided for in the second paragraph of Article 706-54 of the CPP, i.e. when the retention of data no longer appears necessary for reasons related to the purpose of the file. On the changes made to the other con Conditions for the implementation of processingOn the collection of data relating to the procedural framework

and the offenses subject of the procedure initiatedThe Commission notes that the draft decree (Article R. 53-11) allows the collection in the FNAEG, when justified, the procedural framework as well as, where appropriate, references to the offenses mentioned in article 706-55 and subject of the procedure in the context of which registration in the file is requested . Insofar as the FNAEG is an identification file and not a criminal record file, the Ministry has implemented guarantees surrounding the processing of these categories of information (information by means of a drop-down list, and impossibility of perform a search based on this information). With regard to the guarantees thus provided, the Commission approves the presence in the file of this information (including in the form of metadata), which will make it possible to ensure compliance with the judicial or extra-judicial purpose of the data processing, compliance with the conservation of data and the processing of requests for deletion, in order to take into account the reservation of interpretation formulated by the Constitutional Council. On European and international cooperation Firstly, Article 42 of Regulation 2018/1862 provides that missing persons who need to be placed under protection (in the interest of their own protection, or to prevent a threat to public order or public security) and, with their consent, their relatives, when no fingerprint, photographic or facial image material is available. If the Ministry plans to develop an interconnection of the SIS with the FNAEG, he indicated that the transmission of the genetic profile to the processing relating to the national part of the second generation Schengen Information System (N-SIS II) will initially be carried out manually . In this respect, it is planned to do this that the investigator proceeds to the creation of a file in the FPR (insertion of identity data, reason for the search, etc.), on which will be added the identifiers noted in software for writing procedures and/or the TAJ. This form will be transmitted automatically to the N-SIS II, which will request the FNAEG to retrieve the genetic profile associated with the missing person and any parents. The genetic profile will then be added to the file registered in the SIS. The Commission notes, however, that these provisions are not yet in force and that these changes require in any case an amendment to decree no. 2010-569 of 28 May 2010 relating to the FPR, which will have to be submitted to it for its opinion. It already stresses that it will carefully examine the changes envisaged, given the particular sensitivity of this data.Secondly, the Commission stresses that data may be transmitted outside the European Union, and that these transfers can only be made within the framework of international cooperation. It recalls in general that transfers of data to States not belonging to the European Union or to recipients established in States not belonging to the European Union can only be carried out subject to compliance with the conditions set out in Articles 45 et seq. of the GDPR, and 112 of the amended law of 6 January 1978, to which the Commission refers. Finally, it calls for particular vigilance regarding the exchange of data within the European Union

based on the Treaty of Prüm (which aims to fight against terrorism, cross-border crime and illegal migration, and thus establishes enhanced cooperation), taking into account the necessary revision of the latter in the light of changes in the regulations on the protection of personal data since 2005, and in view of the sensitivity of the information likely to be transmitted and the guarantees that must be taken to ensure the p protection of genetic data. On the retention period of traceability data The Commission takes note of the ministry's commitment to limit the retention of application traces to a period of three years. It also recommends that automatic trace analysis measures be implemented in order to detect as quickly as possible any breach of the security of processing data. On other security measures The Commission notes that computer developments allowing the changes envisaged will be entrusted to a subcontractor. It notes in this regard that the Ministry plans to transmit real data to this subcontractor, in particular genetic profiles and the associated barcodes, while other data (surname and first names of the persons concerned, information relating to the laboratories ) will be anonymized before transmission. The Commission recalls that it recommends, when possible, to provide the service providers in charge of IT developments with fictitious data generated specifically or with previously anonymized data and not real data resulting from the processing. In the event that this is not technically possible, the ministry will have to specifically regulate the transmission of such data with the subcontractor via a contract setting security objectives and providing for the procedures for destroying the data at the end of the contract. Commission recalls the need to use up-to-date technological bricks (operating systems, libraries and software) in order to ensure the security of processing. The use of obsolete technological bricks can endanger the security of processing, particularly for tools allowing secure communications such as OpenSSL. The Board takes note of the use of encryption solutions compliant with appendix B1 of the general security reference system during email communications with laboratories. It recommends the use of an updated email client to guarantee the security of communications. For communications using a physical medium, it invites the data controller to put encryption measures in place as soon as possible and, at a minimum, to verify the data by asking the laboratory for the communication of a hash. via secure messaging. The Commission also recalls that any future implementation of interconnections must be subject to the same level of security requirements, particularly in terms of encryption of communications. To allow better control of the integrity of any data entered manually by the operators, the Commission recommends the use of checksums which effectively enable errors to be detected. The Commission welcomes the ongoing systematization of the combined use of an agent card and a code Four-digit PIN. If authentication by password is not excluded, it recalls that this must be carried out in accordance with the recommendations

formulated in its deliberation n° 2017-012 of 19 January 2017. The Commission takes note of the criteria of the Ministry of the Interior security respected in the implementation of backups. In addition, it recalls that the restoration process must be regularly tested to ensure the integrity of these. Other security measures n call for no comments from the Commission. The President Marie-Laure DENIS