

Deliberation 2022-027 of July 16, 2022 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

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2022-027 of March 3, 2022 providing an opinion draft decree from the Conseil d'Etat setting the procedures for certifying electronic identification means as well as the specifications allowing the presumption of reliability of these means to be established and a draft reference system of security requirements for the means of 'electronic identification (request for opinion no. 21021824) The National Commission for Computing and Liberties, Seizure by the National Agency for the Security of Information Systems of a request for an opinion concerning a draft decree in Council of State laying down the methods of certification of means of electronic identification as well as the specifications allowing the establishment of the presumption of reliability of these means and a draft security requirements reference system for electronic identification means; 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 data processing personal data and the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR);

Considering the modified law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms, in particular its article 32; On the proposal of Mr. Claude CASTELLUCCIA, commissioner, and after having heard the observations of Mr. Benjamin TOUZANNE, Government Commissioner, Issues the following opinion: The Commission was seized by the National Agency for the Security of Information Systems (ANSSI) on 9 December 2021 with a request for an opinion relating to a draft decree in Conseil d'Etat setting the procedures for certification of electronic identification means as well as the specifications allowing the presumption of reliability of these means to be established and a draft reference system of security requirements for the means of identification In 2018, the Commission received a first draft decree from ANSSI setting the specifications for the means of electronic identification and a first draft reference document defining the security requirements associated with the means of electronic identification. It issued two separate opinions on this subject on January 17, 2019: deliberations no. 2019-005 and no. 2019-006. The Commission notes that these drafts have not been published. It takes note of the clarifications provided by ANSSI according to which the present draft decree and reference system are in line with the previous referral to which they make some modifications. The Commission welcomes the consideration by ANSSI of most of the observations made in 2019, in particular concerning the principle of minimization of personal data and the possibility for data subjects to exercise their rights. The Commission recalls that with regard to electronic identification, Regulation (EU ) 910/2014

of the European Parliament and of the Council of July 23, 2014 referred to above, known as the e-IDAS regulation, sets a reference framework at European level. It also recalls that Law No. 2016-1321 for a Digital Republic, then Ordinance No. 2017-1426 relating to electronic identification and trust services for electronic transactions, have drawn up a national legal regime for digital identity, which now appears in the postal and electronic communications code (CPCE). First, article L. 102 of the CPCE provides that proof of identity for the purpose of accessing a communication service online can be provided by means of electronic identification. This article also states that this means of identification is presumed to be reliable until proven otherwise when it meets the requirements of the specifications drawn up by ANSSI. The Commission notes that, in this context, the draft decree submitted to it for opinion sets the content of the aforementioned specifications and establishes, at the high level within the meaning of the e-IDAS regulation, the level of guarantee that a means of electronic identification must have to be presumed reliable. The draft decree also specifies the scope (substantial and high levels) and the certification processes (from issuance to repeal) of the electronic identification means provided for by the CPCE in its article L. 102.

Secondly, the draft reference system submitted for opinion to the Commission specifies the requirements of the implementing regulation (EU) 2015/1502 of September 8, 2015 setting the technical specifications and minimum procedures relating to the three levels of guarantee of the electronic identification means referred to in article 8, paragraph 3, of the e-IDAS regulation (low, substantial and high). These general elements recalled, the draft decrees and reference framework transmitted call for the following observations. This requirement recalls that any means of electronic identification presupposes the processing of personal data within the meaning of Article 4-2 of the GDPR and that the implementation of such means identification number must, by design and by default, comply with the essential principles of personal data protection. On the data processed: The Commission takes note of ANSSI's commitment to specify that special precautions must be taken for the processing of data of persons under guardianship, the case of which has been added to the draft repository. It welcomes this clarification, as well as the need to carry out an impact analysis relating to the protection of personal data (AIPD) in this case. this draft reference document indicates that this can be done face-to-face or remotely. In this second case, the draft standard refers to the ANSSI standard applicable to remote identity verification providers (known as PVID). The requirements relating to securing the processing of biometric data are limited to those detailed in the PVID repository for remote verification providers only and a general security obligation. In this context, the Commission considers that the requirements described in the PVID reference system could be applied to all service providers required to process this data. The Commission recalls that Article 9-1 of the

GDPR establishes a principle of prohibition of the processing of certain categories of so-called sensitive data, which include biometric data. Article 9-2 of the GDPR specifies that the aforementioned prohibition may be waived in certain cases, in particular when (a) the data subject has given his explicit consent to the processing of this personal data for one or more purposes or (g) where the processing is necessary for reasons of important public interest. The Commission takes note of ANSSI's commitment to specify in the reference system that if processing of the applicant's biometric data is carried out, it must be justified by compliance with one of the conditions provided for in Article 9.2 of the GDPR. Finally, the Commission takes note of ANSSI's commitment to explicitly state the prohibition on the retention of fingerprints and the requirement, for the storage of an image or complete copy of an identity document, of implement measures guaranteeing a high level of confidentiality.

On the rights of individuals: The Commission notes that ANSSI undertakes that the draft reference system provides that the user of the electronic identification means must have the all the rights provided for by article 15, 16, 17, 18, 20 and 21 of the [GDPR], subject to incompatibility with the other requirements applicable under this standard (for example, the exercise by the user of his right of rectification or deletion should not affect archived data for dispute resolution purposes). The Commission takes note of the clarifications provided by ANSSI relating to the right to rectification of identity data. In particular, it is specified that when such a request is made, the old identity will not be corrected in the archive recorded prior to this request but that this request for correction will be archived. It would like the details provided by ANSSI on the subject of the exercise of the right of rectification to be included in the draft reference system.

On the retention periods of data: The Commission notes that with regard to the retention periods of personal data contained in all types of electronic identification means, the draft reference system provides that the information, in particular that used for non-repudiation purposes, will be kept for a period of six years from the last use for the electronic identification means aiming at the substantial or high guarantee level, or one year from the last use for electronic identification means aiming at the low guarantee level. The standard also specifies that the information will be destroyed during the process of renewal or replacement of the electronic identification means, which ensures that only the last evidential file relating to the individual is kept. The Commission understands that this wording lengthens the data retention period for substantial and high-level electronic identification means, which could be up to eleven years from the issue of the electronic identification means in the event that the evidence file is created as soon as the electronic identification means is published. Although the Commission intends that a long retention period is necessary, it remains reserved on the proportionality of such a retention period for personal data. It notes in particular

that for the logging of data in similar cases, a retention period of 3 years after the facts had been observed. On security measures: The Commission recalls that, with regard to processing that may be liable to generate a high risk for the rights and freedoms of natural persons, a DPIA must be carried out and, if necessary, transmitted to them if a high residual risk is identified at the end of the DPIA, in accordance with Article 36 of the GDPR. In this regard, she would like the wording of the relevant paragraph in the draft reference document to be modified accordingly. The President,

M.-L. Denis