

Deliberation 2021-012 of January 26, 2021 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation: Opinion

Legal status: In force Date of publication on Légifrance: Tuesday April 27, 2021 NOR: CNIX2112936V Deliberation n° 2021-012 of January 26, 2021 providing an opinion on a draft decree creating an automated processing of personal data called "SI Honorabilité" aimed at ensuring the control of the integrity of persons subject to the obligations of Articles L. 133-6, L. 227-10 and L. 227-11 of the Social Action and Family Code and Articles L. 212-9, L. 212-13 and L. 322-1 of the Sports Code (request for opinion no. 20019870)

The National Commission data processing and liberties, Seizure by the Minister in charge of sports of a request for an opinion concerning a draft decree creating an automated processing of personal data called SI Honorabilité aimed at ensuring the control of the good reputation of the persons submitted to the obligations of articles L. 133-6, L. 227-10 and L. 227-11 of the code of social action and families and articles L. 212-9, L. 212-13 and L. 322-1 of the Sports Code; 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 these data, and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR); Having regard to the Social Action and Family Code, in particular its Articles L. 133-6, L. 227-10 and L. 227-11; Having regard to the Code of Criminal Procedure, in particular its articles 706-53-11 and 777-3; Having regard to the Sports Code, in particular its articles L. 212-9, L. 212-13 and L. 322-1; Having regard to law n° 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms, in particular its articles 31-I-2° and 89-I; After hearing Mr. Christian KERT, commissioner, in his report and Mr. Benjamin TOUZANNE, commissioned representative of the government, in its observations, After hearing Mr. Christian KERT, Commissioner, in his report and Mr. Benjamin TOUZANNE, Government Commissioner, in his observations, Issues the following opinion: The control of the good reputation of persons exercising with minors is an obligation enshrined in the Code of Social Action and Families (CASF) and in the Sports Code which provide for a ban on the exercise of any function in the event of conviction for a crime or certain offences, or also in the event of an administrative measure prohibiting or suspending the exercise of his functions pronounced by the prefect, when the professional's continued activity constitutes a danger to the health and physical or moral safety of practitioners or minors. The Commission has been seized by the Ministry responsible for sport (hereinafter the Ministry), on the basis of Article 31-I-2° of the amended law of January 6, 1978 (hereinafter the Data Protection Act), of a request for opinion on a draft decree creating an automated processing of personal data called SI Honorabilité aimed at ensuring the control of the integrity of persons subject to the obligations of Articles L. 133-6, L. 227-10 and L. 227-11 of the CASF and Articles L. 212-9,

L. 212-13 and L. 322-1 of the Sports Code. It was simultaneously seized by the Ministry of two requests for additional opinions concerning: a draft decree relating to the collection of data from persons subject to the obligations of articles L. 212-9 and L. 322-1 of the sports code with a view to checking their good reputation; a draft decree amending the decree of 7 August 1997 relating to the management by the Ministry of Youth and Sports of a file of physical and sports activities concerning educators and establishments. These draft texts are intended to meet the need to systematize the control of the good reputation of volunteer sports educators licensees of sports federations and operators of physical and sports activity establishments licensed by sports federations. To do this, they create the Honorability IS for which the sports directorate, the youth, popular education and community life directorate and the general secretariat of the ministries responsible for social affairs are jointly responsible, and whose functionalities main functions: to query the national automated judicial file of perpetrators of sexual or violent offenses (FIJAISV); to manage the database of prohibited executives; to return to the competent State services the information obtained from the FIJAISV to manage the incapacity of exercise or operation of an establishment hosting physical and sporting activities resulting from the integrity checks carried out. Two regulatory acts currently govern the processing of personal data used for the purposes of checking the integrity of persons working with minors :for the field of youth, popular education and associative life: the decree of the April 19, 2012 creating the processing of personal data relating to the management of collective reception of minors of an educational nature called SIAM determines the control of the good reputation of the persons exercising within these receptions; for the field of sport: the decree of February 28, 2014 creating the processing of personal data called Teledeclaration of sports educators (EAPS processing) defines the procedures for checking the integrity of professional sports educators. In the long term (December 31, 2021 at the latest), the IS aims to become a shared and unique portal for monitoring the good reputation of all professionals working with minors. It should cover the entire system for checking the good reputation of people working in collective reception centers for minors in the field of youth, popular education and associative life and professional sports educators, educators volunteer athletes and operators of establishments hosting physical and sporting activities licensed by sports federations in the field of sport. Thus, according to the information provided by the Ministry, the processing of SIAM and EAPS personal data will be connected to the Honorability IS. In this respect, the Commission draws the Ministry's attention to the fact that the regulatory acts creating these processing operations must be updated prior to their connection to the Honorability IS, insofar as the SIAM and EAPS processing operations will supply and will be supplied by the data from the Honorability IS . Furthermore, insofar as the Integrity IS could also concern other actors (within a timetable still to

be defined), for example health establishments or other establishments in the social or medico-social sector, the Commission alerts the Ministry on the fact that any new use of the Honorability IS to control the integrity of professionals in a new field, will require a modification of the decree creating the Honorability IS, of which it must be seized. From a functional point of view, the SI Honorabilité has two distinct portals: SI Dépose and SI Retour . The SI Dépose portal is designed so that federations can file the information necessary for the automated query of the FIJAISV concerning volunteer sports educators and operators of establishments hosting physical and sports activities licensed by sports federations. Eventually (December 31, 2021 at the latest), SIAM and EAPS processing will be connected to this portal for the purpose of allowing automated querying of the FIJAISV, the national criminal record (bulletin no. 2) and the national executives database. prohibited for people working in collective reception facilities for minors and professional sports educators. The SI Retour portal is designed to: manage and consult the database of prohibited frameworks for volunteer sports educators and identify people unable to practice an administrative measure of prohibition or suspension pronounced by the prefect. In the long term (December 31, 2021 at the latest), the bases of the prohibited executives currently integrated into the SIAM and EAPS processing will be merged with that of the volunteer sports educators within the portal SI Retour; to allow the competent State services to receive the identity of persons likely to be registered with the FIJAISV and for whom an inte manual rrogation of the file must be done; in the long term (December 31, 2021 at the latest), recover the information relating to the control of the national criminal record (bulletin n ° 2) carried out exclusively with regard to people exercising within collective reception minors and professional sports educators: 0 for ballots marked nil and 1 for the situation where a letter has been sent to the competent department, in particular in the event of possible convictions, requests for additional information concerning the identity or death of the person. This information is not displayed in the Return IS: it is stored in the Honorability IS while the SIAM and EAPS processes retrieve the information. In view of these circumstances, the Commission considers that the Honorability IS requires legal and technical security level, and makes the following observations. On the purposes of the processing Article 1 of the draft decree specifies that the purpose of the processing is to enable the agents of the sports department and the youth department, the popular education and associative life authorized, to carry out a control of the good repute of the voluntary and professional sports supervisors and the operators of establishments hosting physical and sports activities licensed by the federations as well as the operators of establishments, services or places of life and reception governed by the provisions of the CASF. Also, the draft article specifies that this control aims to ensure that the m maintaining the activity of the persons checked does not

present any risks or dangers for the health and physical or moral safety of minors or practitioners in application of articles L. 227-10 and L. 227-11 of the social action code and families and Article L. 212-13 of the Sports Code. The Commission considers that the intended purposes are determined, explicit and legitimate in accordance with the provisions of Article 5.1.b) of the GDPR. On the conditions of interrogation of the FIJAIS and the national criminal record Article 706-53-11 of the Code of Criminal Procedure provides that no reconciliation or connection within the meaning of Article 33 of Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms cannot be carried out between the file provided for in this chapter (FIJAISV) and any other file or collection of personal data held by any person or by a State service not dependent on the ministry of justice, at the exception of the file of persons wanted for the exercise of the diligence provided for in this chapter. The Commission consistently interprets the word connection in this article as specifically referring to interconnections. Moreover, article 777-3 of the same code mentions that no interconnection within the meaning of 3° of I of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms cannot be carried out between the automated national criminal record and any other file or processing of personal data held by any person or by a State service not dependent on the Ministry of Justice. The queries of the FIJAISV and the criminal record are carried out automatically from the SI Retour by specialized web services or APIs set up by the Ministry of Justice and passing through a private internal network, on the basis of data from identity registered in the IS Deposit (in particular title, surname, first name, date and place of birth). For each of the transmitted identities, specific return codes and a pseudonymised internal identifier are returned by these interfaces. This data, as well as the data initially sent and the identifiers internal to the Honorability IS, are stored in the Return IS. Regarding FIJAISV, four return codes can be returned (technical error, impossibility of identifying the person, identity to be verified, or identity not registered with FIJAISV). A free-text comment field is intended for the central administration so that it can enter any element that it deems necessary to bring to the attention of the recipient (apart from indications relating to the identity of the person ). Concerning the criminal record, there are two return codes corresponding either to a letter sent to the competent department (request for additional information or manual check required due to a positive bulletin n° 2) or to the information that bulletin n° 2 marked nil. The Commission notes that these query methods, and the resulting returns, are identical to those implemented in the context of SIAM and EAPS processing, which it considered to be in compliance with Articles 706-53-11 and 777-3 of the code of criminal procedure cited above (deliberations no. 2012-031 of February 2, 2012 and no. 2013-274 of September 26, 2013). The Honorability IS is therefore not automatically supplied with data from the FIJAISV or the criminal record: these files

are, if necessary, only consulted manually by an authorized agent. In addition, the Commission wonders about the retention period one year return codes from FIJAISV. As part of the SIAM processing, it had noted that these codes were only kept for one month and considers that the ministry should align itself with this duration. It takes note of the Ministry's commitment to reduce this period to six months. On accessors and recipients Article 4 of the draft decree provides that are authorized to access the data recorded in the SI Retour by reason of their respective attributions and within the limits of the need to know: Agents of the sports department appointed by the sports director; Agents of the youth, popular education and associative life department appointed by the director of youth, popular education and community life. This provision also provides that the agents of the regional and departmental delegations in charge of youth, sports and social cohesion duly authorized by their directors are recipients of the information recorded in the return IS. The Commission takes note of the observations of the Ministry specifying that only the authorized agents placed under the authority of the Ministry responsible for sports and the representative of the State within the departments will ensure the incompatibility between the functions of voluntary sports educators and operators of physical and sports establishments licensed by federations as well as organizers of collective receptions and the crimes and misdemeanors covered by the CASF and the sports code. , the Commission also takes note of the Ministry's observations according to which a registered letter will be sent to the organizers in the context of a worker being convicted of a sentence rendering him unable to practice in collective reception of minors pursuant to the provisions of Article L. 133-6 of the CASF and that the organizers of collective reception of minors are not informed of the nature re offenses committed by the intervener and rendering him unable to practice within these receptions. The Commission takes note of these observations and recalls that the letter sent to the organizers should only mention the information relevant to the purpose pursued in accordance with the provisions of Article 5.1°.c) of the GDPR. Concerning information relating to supervisors volunteer sportsmen and the operators of establishments hosting physical and sports activities transmitted to the federations, the ministry specified that the notification of incapacity is addressed to the person concerned as well as to the structure within which the person evolves and that When the incapacity is motivated by crimes and misdemeanors for acts of violence, the decision of incapacity is transmitted to the referent designated by each federation, exclusive interlocutor of the sports management, so as to allow the federation to implement the administrative or disciplinary procedures for which it is responsible (...). The ministry specified that the federation is informed only when the incapacity is motivated by a crime or an offense registered with the FIJAISV without specifying however whether it will be informed of the nature of the crimes and offenses

committed by the intervener. On this last point, the Commission points out that it does not need to be aware of it. The notification of incapacity is also notified to the person concerned by the regional and departmental delegations for youth, sports and social cohesion. .On information and the rights of individuals The Commission notes that the procedures for informing volunteer sports educators are specified in the framework of the draft decree relating to the collection of data from persons subject to the obligations of Articles L. 212-9 and L. 322-1 of the sports code with a view to checking their good reputation (deliberation no. 2021-014 of January 26, 2021). With regard to professionals working with minors subject to integrity checks, the ministry specified that the information will be issued by the organizers of collective reception of minors at the time of their registration within the structure. In addition, the ministry also specified that information notices will also be available on the institutional sites of the administrations concerned. The Commission draws the Ministry's attention to the need to update the information as it currently exists. It notes that the procedures for exercising rights are provided for in the draft decree. Indeed, article 5 of the draft provides that the rights of access, rectification and limitation will be exercised with: the sports department for persons whose good reputation is checked pursuant to articles L. 212-9 and L. 322-1 of the sports code; the department of youth, popular education and community life for people whose good reputation is checked pursuant to article L. 133-6 of the sports code; social and family action. The Commission also notes that Article 5 of the draft decree provides that the right to object does not apply to this processing in accordance with the provisions of Article 23 of the GDPR and article 56 of the Data Protection Act. The Commission recalls that the act must provide for the measures set out in Article 23-2 of the GDPR. On retention periods Article 4-1° of the draft decree provides that in the IS filed, the identity data relating to persons whose good reputation is checked are kept for one year. Article 4-2° of the draft decree also provides that in the return IS, the data is kept (...):

- a) The data relating to persons subject to a suspension measure, an injunction to cease, to practice or a ban on practice are kept for the entire duration of the measure, plus an additional period of fifteen days;
- b) The data mentioned in 2) of Article 2 and relating to persons for whom a consultation of the portal of the national automated judicial file of perpetrators of sexual or violent offenses is necessary are kept for one year.

The Ministry specified that this This delay was necessary insofar as the administrative investigation procedures prior to an administrative police measure (...) can be long and complex, in particular when they require coordination between several departments. In view of the previous observations, the Commission invites the Ministry to reduce the retention period to one month from the filing of the information in the IS return by the agents of the Ministry of Justice, as far as the FIJAISV is concerned. It also invites the Ministry to reduce the retention period of functional

traces relating to events associated with persons subject to a integrity check for this same period. On security measures The Commission notes first of all that the planned processing, carried out on a large scale and including in particular sensitive data, has been the subject of a DPIA. It also notes that the Honorability IS was subject to security certification covering all of its functionalities, including those relating to connections with SIAM and EAPS processing, prior to its deployment. Concerning user authorization , the Commission notes that different profiles allowing granularity of access will be created in order to access the data as needed. She also notes that admin profiles will be limited to technical features such as account management and technical release tracking. These administrator profiles will no longer have access to any sensitive data. The Commission notes that technical measures have been implemented to partition the Drop-off IS and the Return IS, in particular through the use of databases, and different servers. The SI Retour will no longer be accessible to users except from the ministry's intranet. The Commission notes that encryption measures to ensure the integrity and confidentiality of the data processed will be implemented in the processing framework, both in terms of storage, backups, access flows and data exchanges, in the different environments. It notes, for example, that identity data will be encrypted in the database by state-of-the-art algorithms and that organizational measures are implemented to encrypt emails transmitted manually and which may contain lists of persons or documents. It notes, however, that the data transmissions between the SI Retour and the servers of the Ministry of Justice during the automatic sending and reception of data related to the interrogation of the FIJAISV and the criminal record may not be encrypted during the commissioning of the Honorability IS . The Commission observes that these data transmissions will be carried out via an interministerial network but asks the Ministry to put in place the technical measures related to the encryption of data flows. The Commission further notes that the file identification numbers are currently incremental, which may allow an attacker or user to deduce information about persons subject to a good reputation check. It notes that non-incremental file identification numbers will be implemented by the end of the first quarter of 2021 but asks the Ministry to implement this functionality prior to the deployment of the Honorability IS, for example by using a cryptographic generator of pseudo numbers -random for these file identification numbers. Concerning the authentication of users within the IS Deposit and the IS Return, the Commission takes note of the use of an authentication solution and a password policy in accordance with the recommendations of deliberation no. 2017-012 of January 19, 2017 adopting a recommendation relating to passwords. Given the sensitivity of the data concerned, and although such a security measure is not explicitly imposed by the texts in force, the Commission strongly recommends that the Ministry only allow access to the

data after strong authentication, comprising at least two different authentication factors. The Commission points out that the technical traces will not include any sensitive data and will be kept for a period of ten days. The Commission recalls that its position on the management of logs is to keep them for a period of six months for security purposes and to combine them with a proactive automatic control mechanism, a mechanism contributing to the detection of abnormal behavior by the generation automatic alerts. Finally, the Commission notes that the functional traces relating to events associated with a user will be kept indefinitely. The Commission considers, with regard to the purpose of security and the elements at its disposal, that an unlimited retention period is excessive. The Commission reiterates that its position on the management of traces is to keep these for a period of six months for security purposes and to match them with a proactive automatic control mechanism. If it were determined that residual risks remain despite the implementation of this proactive control tool, it could then be considered to increase this duration in order to cover the identified risk. The other points of the draft order do not call for comments from the Commission. The President Marie-Laure DENIS