

Deliberation 2021-062 of May 27, 2021 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Thursday, December 16, 2021 Deliberation n° 2021-062 of May 27, 2021 issuing a public opinion on the conditions implementation of information systems developed for the purpose of combating the spread of the COVID-19 epidemic (January to April 2021) (request for opinion no. 219468) The National Commission for Computing and Liberties , 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 the Directive 95/46/EC (RGPD); Having regard to Law No. 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms; Having regard to Law No. 2020-546 of May 11, 2020 as amended extending the state of health emergency and supplementing its provisions provisions, in particular its article 11; Having regard to decree n° 2020-551 of May 12, 2020 as amended relating to the information systems mentioned in article 11 of law n° 2020-546 of May 11, 2020 extending the state of health emergency and supplementing its provisions; Having regard to decree n ° 2020-650 of May 29, 2020 modified relating to the processing of data called TousAntiCovid; Having regard to decree n ° 2020-1690 of December 25, 2020 authorizing the creation of a data processing at personal nature relating to vaccinations against covid-19; After having heard Mrs. Marie-Laure DENIS, President, in her report, and Mr. Benjamin TOUZANNE, Government Commissioner, in her observations; Issues the following opinion: To fight against he COVID-19 epidemic, the law of May 11, 2020 extending the state of health emergency authorized the temporary creation of two national files: SI-DEP and CONTACT COVID. This processing of personal data is governed by a Conseil d'Etat decree of 12 May 2020 which specifies their methods of creation and implementation. Alongside these files, other devices have been deployed for the purpose of combating the COVID-19 epidemic, such as the TOUSANTICOVID mobile application, the processing of which is governed by decree no. 2020-650 of May 29, 2020 amended, and the COVID VACCINE information system to allow the conduct and monitoring of the vaccination campaign against the SARS-CoV-2 coronavirus, and the processing of which is regulated by decree n ° 2020-1690 of December 25, 2020. In the context of the health crisis, the Commission has been called upon to rule on several occasions, urgently, on the normative framework governing this processing: heard eleven times and having issued ten opinions since April 2020, it has thus informed the parliamentary debates around the fundamental issues related to the respect of privacy and personal data. The Commission has also carried out thirty-two inspections since the implementation of these systems. Its recommendations and findings were detailed in its first two opinions, dated September 10, 2020 and

January 14, 2021, relating to the operation of these information systems. In order to allow the Commission to fully assess the proportionality and the need of these systems, deployed as part of the Government's current health policy, it seems essential that, more than a year after the start of the health crisis and as it recalled in its first two opinions, concrete elements of evaluation of their usefulness and effectiveness in the fight against the COVID-19 epidemic are brought to its attention. This third opinion of the Commission, issued on the basis of article 11 of the law of May 11, 2020 , will endeavor, in particular with regard to the recommendations it has issued in its opinions on the draft texts submitted to it since December 2020 and its findings during the various checks carried out, to recall the recent changes in the normative framework and to assess the operational conditions for implementing this processing.

CHANGES IN THE NORMATIVE FRAMEWORK AND OPINION OF THE CNIL treatment linked to the health crisis.

The Commission's opinion on the changes made to the CONTACT COVID information system

As part of the management of the health crisis, the Government wished to strengthen the mechanism for tracing the chains of transmission of the virus expanding the scope of the CONTACT COVID file. This results in: a significant extension of the number of people concerned by the addition of the possibility of collecting data relating to co-exposed people (1); the collection of new categories of data: concerning participation in gatherings, events or activities of more than six people who present a higher risk of contamination; relating to the return from an international trip or in the Overseas Territories and more particularly to the identification of the stations or airports that the people visited during the return from a stay in an overseas department or community or in a third country as well as operators of these means of transport. to these developments with the aim of facilitating the performance of health surveys. In its opinion of January 19, 2021(2), the Commission notably:stressed that, while the draft decree provides for a considerable and substantial extension of the information collected in the information system, this system must remain conditional on the voluntary participation of persons interviewed; invited the Ministry to clarify and make public, for example on its website, several elements including the criteria for distinguishing between the notion of co-exposed person and that of contact case, as well as the hypotheses in which it could be considered that the barrier measures could not be fully respected; recalled that the information collected cannot be used for purposes other than those provided for by the decree, and in particular cannot be used for monitoring compliance with the measures aimed at combating corruption. outbreak of COVID-19; underlined the need to provide technical measures to ensure data security; requested that instructions Clear and uniform instructions are given to all persons working on the CONTACT COVID information system. The latter must also be regularly trained and made aware of data protection and

privacy issues. It also spoke about: the new categories of data collected concerning participation in gatherings, events or activities: the Commission has expressed reservations about the collection of certain categories of data with regard to the principle of minimization, such as the collection of the name of a gathering, event or activity (3), or the collection of a prolonged presence in a meeting room. wait (4). These data do not appear among those that may be collected within the framework of the published decree. the possibility of disclosing the identity of patient zero subject to his consent and when this is necessary to new categories of people(5): the Commission recalled the sensitive nature of this transmission and the need to clearly inform patient zero so that he can express free and informed consent. It recommended that the ministry propose to patient zero to express their consent to the disclosure of their identity for each category of recipients and not to give global consent; the search for the contact details of patient zero, contact cases and co-exposed persons in the event of unavailability or absence from third parties: the Commission requested that the notion of third party be replaced by an exhaustive list of organizations that could be contacted for the purpose of finding missing contact details and was followed on this point. On the modifications to the SI-DEP and CONTACTCOVID information systems envisaged by the draft law relating to the management of the exit from the health crisis The Commission notes that the draft law relating to the management of the exit from the health crisis in course of discussion does not provide for the extension of the existence of the SI-DEP and CONTACTCOVID files beyond the duration provided for by the law of May 11, 2020. These files must therefore, if necessary applicable, be deleted on December 31, 2021. However, the bill provides for the possibility of centralizing data from the SI-DEP and CONTACT COVID files within the National Health Data System (SNDS) in order to facilitate epidemiological surveillance and the research on the virus, when they belong to the categories of data mentioned in article L. 1461-1 of the public health code (CSP). The Commission notes that this centralization leads to a substantial change in the legal regime applicable to this data, particularly with regard to the purpose of the processing or the retention period of pseudonymised data for the purposes of epidemiological monitoring and research on the virus. . Thus, this centralization will have the effect of allowing the storage of pseudonymised data from these files, for research and epidemiological monitoring purposes, currently authorized until December 31, 2021, for a period of up to twenty years (6). Without calling into question the essential interest of keeping data for research purposes, the Commission invites the Government to provide adequate information procedures for the persons concerned and to facilitate the exercise of their rights. The Commission will pay particular attention to this. The Commission's opinion on the modifications made to the TOUSANTICOID application The Commission's opinion on the system for recording visits to

certain establishments open to the public With a view to the reopening of certain establishments open to the public (ERP), the Government wished to continue its developments in order in particular to introduce a digital device for recording visits to such places (based on the reading and recording of QR codes made available to the ERP entry). This system is intended to facilitate the alert of people who have visited these places during a time slot similar to that of one or more people subsequently screened or diagnosed positive for COVID-19. This development of the device bringing substantial modifications to the processing, the Commission was asked urgently to issue an opinion on the draft decree modifying the decree relating to the TOUSANTICOVID application. In its opinion dated 17 December 2020, the Commission: considered that the usefulness, at the current stage of the fight against the epidemic, of an additional device for identifying contacts at risk of contamination has been demonstrated; noted that the technical and functional architecture of the device provides several substantial guarantees such as to ensure its proportionality (absence of geolocation or tracking of the user's movements, etc.). It recognized the interest of the system in combating the COVID-19 epidemic and underlined that the concrete assessment of the proportionality of the collection envisaged should be refined when the conditions for reopening public buildings are known (precise list of ERP concerned, optional or compulsory nature of the system for recording visits for the establishments and the persons concerned, etc.); formulated certain recommendations in order to minimize the infringement of the right to the protection of personal data: on the one hand on the other hand, that the compulsory nature of the system is, if necessary, limited to only ERP presenting a high risk and, on the other hand, that it is not made compulsory in places whose frequentation is likely to reveal sensitive data (places of worship, etc.); invited the ministry to provide new safeguards likely to further minimize the risks of user tracing, such as a limitati on the validity period of QR-codes (7), or even the use of single-use codes. drew the attention of the Ministry to the need to regularly update the impact analysis relating to data protection (AIPD) before implementing the successive changes to the application and regretted that the AIPD dedicated to the device for recording visits via the application, currently being developed, was not sent to it in support of the referral , whose opinion was delivered on December 17, 2020. It asked that it be sent to it and reiterated its call for transparency on this point, recommending in particular that this DPIA be made public. Following the opinion of 17 December 2020, the Ministry requested the services of the Commission in the context of a request for advice on a substantial change to the protocol (8) governing the system for recording visits to ERPs based on the reading and recording of QR codes. The observations of the Commission formulated in the opinion on the technical aspects of the device, newly baptized TousAntiCovid-Signal, and of the underlying protocol have been taken into consideration by the

Ministry, which offers better guarantees in terms of data protection and security. In particular, the new protocol relies not only on a decentralized architecture for verifying a user's exposure risk, the estimation and notification of which are performed locally on the application user's terminal, but also on the use of periodically renewed dynamic QR codes. This device has not yet been deployed. However, some experiments are taking place in specific locations. The Commission will be attentive to the concrete methods of implementing this new functionality. successive evolutions of the application since the deployment of its version 2.0 on October 22, as mentioned above. Thus, the Commission has notably ruled on: the integration of new functionalities of the TOUSANTICOVID application(9). The Commission noted that safeguards were provided in a logic of data minimization and data protection by design and by default. However, it considered that it did not appear appropriate to regulate these aspects which, as provided for, remain entirely at the discretion of the person using the application and under their control; the prioritization of contact cases in access to examinations or screening tests. The Commission considered, in its opinion, that such a device could not call into question the voluntary nature of the use of the application since this priority access will not be reserved for users of the application, but open to all contact cases. She nevertheless recommended clarifying this point in the information provided, in particular in the application itself; the integration of a push notification system, linked to the contact tracing functionality via Bluetooth technology. The Commission noted that such a system, which was the subject of findings during its last checks, involved the processing of personal data which did not appear in Article 2 of the decree of 29 May 2020 relating to the processing of data called STOPCOVID in force. It therefore invited the Ministry to complete the draft decree in order to mention, under the data processed, the data necessary for these push notifications. The

TousAntiCovid-Carnet feature On April 19, 2021, the Ministry of Solidarity and Health rolled out a new feature called TousAntiCovid-Carnet. This is a digital notebook for storing, electronically, certificates of test results (PCR and antigens) as well as vaccination certificates. This functionality allows users to be able to present certified test results or vaccination certificates to the competent authorities, when the provision of these documents is compulsory. these are respectful of the right to the protection of personal data and the privacy of individuals. The CNIL was thus able to share its recommendations as to the guarantees to be provided, in particular to ensure data security. In particular, the main observation communicated to the Ministry concerns the authentication methods that can be put in place for the recovery of evidence by users on one or more dedicated teleservices. The Commission recalls that the choice of such a method is based on the carrying out by the Ministry of a risk analysis, and that this analysis will have to be sent to the Commission in the form of an impact analysis relating to the

protection of data. New application checks will be carried out with regard to the update of the application containing these new devices. The quarantine and isolation information system May 2021 of an amending referral to a draft decree aimed at creating a processing of personal data called quarantine and isolation, under the joint responsibility of the minister responsible for health and the minister of the interior. This processing aims to ensure the monitoring and control of compliance with the individual measures mentioned in Article L. 3131-17 of the CSP motivated by the arrival of people on the national territory, from a country or territory confr have led to a particularly active circulation of the epidemic or to the spread of certain variants of SARS-CoV-2, the list of which is set by order of the Minister for Health. In its opinion of 12 May 2021, the Commission pronounced in particular: on the legal regime applicable to the processing. The Commission considered in its opinion that the system fell under a mixed regime, namely the GDPR for the purpose of monitoring individual measures, and Title III of the law of 6 January 1978 for the purpose of monitoring compliance with these measures by noting the offenses mentioned in article L. 3136-1 of the CSP. It therefore considered that the regulatory provisions should reflect this mixed regime and that the processing should be brought into compliance with the regulations relating to each of these regimes; on the data collected. The Commission has invited the ministries to show particular vigilance with regard to the procedures for collecting information (limitation of the use of free fields, respect for the principle of minimization, etc.) and to raise the awareness of the people who fill in this system. d'information. She also recalled that if the quarantine and isolation file were to lead to the processing of so-called sensitive data, in particular data concerning health, it must be authorized by decree in the Conseil d'Etat; on accessors and recipients: The Commission asked for clarifications to be made to the decree regarding: the categories of users and recipients of personal data; the purposes for which each of these categories of persons may be recipients of data from the quarantine and isolation file; the non-access of border control officers to the data. The Commission also wondered, with regard to access to data by authorized agents of local health insurance bodies, on the articulation between the system envisaged and that implemented within the framework of the CONTACT COVID file. It took note of the Ministry's clarifications that no interconnection, reconciliation or linking of the quarantine and isolation information system with other processing operations has been implemented; on the information of persons: The Commission noted that Individual information would be issued to the persons concerned at the same time as the notification of the individual measure. It considers that the persons concerned must be informed of the measures that will be taken in their regard before undertaking their journey to the territory. In addition, the Commission questioned the proportionality of the system envisaged, the ministries having specified that the processing is

at this stage implemented only in two airports, located in Ile-de-France (Paris-Orly and Paris-Charles-de-Gaulle) and considered, in its opinion, that the processing, such as it was presented to him, does not fully meet the purposes for which it is implemented. However, it noted that the draft decree submitted to it aims to cover all entry points into the national territory. The Commission, which was not informed of the technical details of the file, recalled that it will be vigilant as to the conditions of implementation of this system and that it will exercise its power of control.

ASSESSMENT OF THE COMMISSION ON THE OPERATIONAL CONDITIONS FOR THE IMPLEMENTATION OF PROCESSING

In accordance with what had been indicated in the deliberations of 10 September 2020 (10) then from January 14, 2021 (11), the Commission continued its investigations into the SI-DEP and CONTACT COVID systems and the TOUSANTICOVID application. She also initiated her first checks on COVID VACCINE treatment (12). These verifications of the concrete conditions of implementation of the files were carried out within the framework of online checks, on hearing, on documents and on site. A total of thirty-two control operations were carried out between May 2020 and April 2021: ten concerning SI-DEP, twelve concerning CONTACT COVID, seven concerning TOUSANTICOVID (including those carried out on STOPCOVID) and three concerning the COVID VACCINE. The Commission's investment in carrying out these checks is unparalleled in the history of the institution, both in terms of the number of checks carried out, their recurrence or the period of time during which they unrolled. This continuous monitoring of processing, for some from the start of their implementation, has ensured that the issues related to data protection are taken into account in a permanent and exhaustive manner. This opinion includes summary elements from the findings made by the Commission in the context of the third phase of verifications which took place from January to April 2021. It also reports on the regular exchanges which took place with the Ministry of Solidarity and health, the National Health Insurance Fund (CNAM) and the regional health agencies (ARS) during this period.

A. Control of SI-DEP and CONTACT COVID files

The investigations of SI-DEP and CONTACT COVID processing have continued to be carried out simultaneously since the last CNIL opinion issued in January 2021. For SI-DEP processing, new checks have been carried out. took place with the Assistance Publique - Hôpitaux de Paris (AP-HP), which ensures the operational implementation of the SI-DEP treatment, as well as with pharmacies using SI-DEP in order to submit the results of the antigenic tests that they realize. For the CONTACT COVID treatment, on-site checks took place with two new ARS responsible for managing complex chains of contamination: patients who tested positive residing in homes, medico-social establishments, schools, universities, etc. .The verification points mainly related to: the procedures for informing people; the security of information systems; data flows and recipients; processing of

data; carrying out impact analyzes relating to data protection. The SI-DEP file In order to take into account the evolution of the methods of carrying out screening examinations by authorized health professionals, the processing SI -DEP was extended by decree of November 14, 2020 to include the feedback of the results of all screening examinations (serological or virological) carried out by health professionals appearing on a list provided for by decree and authorized to carry out these tests (doctors, medical biologists, pharmacists and nurses). The main purpose of the SI-DEP processing control operations carried out in March 2021 was to verify the methods according to which these new authorized health professionals, including pharmacies, supply the SI-DEP processing and the methods for transmitting SI data -DEP to the CNAM for the purpose of uploading to the Health Data Platform (PDS) referred to in Article L. 1462-1 of the CSP (known as the Health Data Hub). It was also a question of verifying the effectiveness of the measures taken following the observations formulated by the Commission in its previous opinions concerning the security of information systems. The checks thus showed that the retention periods of the test results were respected. They also revealed that the action plan concerning the management of certain user accounts and the traceability of access had been deployed, thus ensuring a satisfactory level of compliance, responding to the recommendations issued during previous inspections. The checks also revealed that the new procedures for authentication and access to the SI-DEP interface for new healthcare professionals are compliant and grant them access rights that are adequate with regard to their missions. With regard to the transmission of data to the CNAM for the purpose of entering the test results into the PDS, it was noted that the latter is now operational. The purpose of this data flow is to populate the PDS to provide researchers with access to the data for research purposes. During the control operations in March 2021, it appeared that the data extraction operations with a view to their inclusion in the portals made available by the CNAM, for the transfer of data from the SI-DEP processing to the latter, do not are not carried out according to methods that ensure, in an entirely satisfactory manner, the confidentiality of the data. Verifications will be carried out soon on the methods of treatment implemented by the CNAM in the context of the uploading of data in the PDS. Finally , with regard to the operational implementation of the tests carried out in pharmacies, checks carried out in two pharmacies revealed that the Ministry has taken satisfactory measures to support pharmacists in their handling of the IS tool -DEP, in particular on the information they must bring to the attention of the people tested. It nevertheless appeared that sometimes, when the number of patients was large, particularly with regard to the pharmacy staff, the information of the people and the confidentiality of the data were no longer ensured in such a rigorous manner. These observations led the Commission to draw the attention of the National Council of the Order of Pharmacists

(CNOP) to the importance of making their members aware of compliance with the principles laid down by the GDPR in the context of carrying out antigenic tests, and in particular on the content and the fate reserved for the information collection sheets filled in by the people when they are taken care of, as well as the information to be given to them on this occasion. The CONTACT COVID File As announced by the Commission in the context of its previous opinion, the checks carried out between January and April 2021 essentially focused on the use of data from CONTACT COVID by ARS as part of their monitoring mission. e level 3 contacts. These are two new ARSs that have been subject to checks since the CNIL's second opinion of January 14, 2021. As a preliminary point, it should be recalled that the ARSs are public establishments, morally and autonomously financially, placed under the supervision of the Ministry of Solidarity and Health (13). Many disparities were noted concerning the practices of the ARS in the context of the level 3 contact tracing activity. Firstly, concomitantly with the previous opinion, a letter was sent to the Ministry of Solidarity and of health in order to alert it to bad practices noted with certain ARS. Following this letter, the ministry notably held meetings with the data protection officers of several ARS in order to raise their awareness of the various recommendations issued by the Commission and the need to carry out a DPIA. also specified that since January 14, 2021, the ARS no longer send by email or SMS the offer of assistance with isolation and health instructions, which is now provided by the CNAM (14). In addition, at the same time, on January 21, 2021, letters were sent by the Commission to all the ARS to remind them of the measures necessary to protect the data of the persons concerned from the CONTACT COVID tool. Following these exchanges, the verifications carried out revealed the implementation of numerous measures to optimally guarantee the respect of personal data, in particular by using a tool adapted to the management of the epidemic: of a DPIA, use of a health data host, etc. However, the Commission still noted several points of non-compliance during checks carried out with an ARS: Bad practices noted during this check are: an excessive retention period for data relating to the follow-up of zero patients or contact cases, the ARS in question not purging the data recorded within the internal file server at the end of a period of three months as it should; deficient information of the persons concerned, the controlled ARS having not formalized any information document (paper or digital) intended for the persons whose data is processed s in the context of the level 3 contact tracing activity; the absence of a DPIA. This analysis, which must in particular make it possible to identify the risks associated with the processing carried out and the means to be deployed to limit them, is necessary in the case of files implemented to respond to a health alert. This legal obligation (art. 67 of the Data Protection Act) was reminded to each of the ARS both in the context of the previous public notice and in the letters

sent to them by the Commission. The Commission invites the Ministry of Solidarity and Health to provide the ARS with a reference DPIA. In the light of the findings made, the President of the Commission sent this ARS a formal notice to comply with the requirements of the GDPR in a two-month period. This is the second formal notice sent by the Commission to an ARS as part of the checks carried out on the information systems dedicated to the management of the pandemic. As had already been done in the previous case, a letter was sent to the Ministry of Solidarity and Health to alert it to the bad practices identified.

B. Control of the TOUSANTICOVID application

On June 2, 2020, the STOPCOVID application was deployed by the Ministry of Solidarity and Health in mobile application stores (iOS and Android) accessible to the general public. A first phase of control took place in June 2020. Following these checks, the President of the Commission gave formal notice on July 15, 2020 to the Ministry of Solidarity and Health to bring the processing of data in connection with the STOPCOVID application to the GDPR and to article 82 of the Data Protection Act. The Ministry having complied within the time limit, the President of the Commission pronounced the closure of this formal notice on September 3, 2020. On October 22, 2020, the Ministry of Solidarity and Health published a new version of the STOPCOVID application, called TOUSANTICOVID. It also provides up-to-date information on the circulation of the virus and links to other Government digital devices and allows the generation of derogatory travel certificates. The Commission carried out new checks on this application with the Ministry of Solidarity and Health, responsible for this processing, as well as with the other organizations involved in its implementation, including in particular the National Institute for Research in Digital Sciences and Technologies (INRIA), which designed the protocol on which application and who acts as a project management assistant. These verifications, carried out in October and November 2020, focused in particular on the sustainability of the measures taken following the formal notice of July 15, the compliance of the new features of the application with the GDPR and the Data Protection Act. With regard to changes to the application since the November 2020 checks, the new functionalities described above (TousAntiCovid Carnet and the digital device for recording visits in certain ERPs) have not yet been fully integrated into the TOUSANTICOVID application at the beginning of April 2021, no new control of the application has been carried out by the Commission since November 2020. New controls will be carried out soon with the update of the application containing these new devices, or any other development substantially modifying the processing implemented.

C. Control of COVID VACCINE processing

Decree no. 2020-1690 of December 25, 2020 authorized the creation of personal data processing relating to vaccinations against covid-19, called COVID VACCINE. A first phase of control of this treatment is currently in progress, a hearing of the CNAM having taken place at the beginning of March. (DGS), the latter were

able to communicate to the inspection delegation documentation provided, the use of which is in progress. As part of the CNAM hearing, the Commission was able to access a test environment of the Covid Vaccination teleservice. This teleservice is used by health professionals to import their patients' data and report data relating to vaccination. Any health professional authorized to carry out vaccination operations can search for a person via their registration number in the national directory. identification of natural persons (NIR) and access the data and the vaccination status of this person. These research possibilities by NIR are not exclusive to the Covid Vaccination teleservice and the consultation of medical information by a health professional is governed by ethical rules. The delegation also noted that a reminder message is displayed for the attention of healthcare professionals to remind them that any illegitimate consultation may lead to sanctions. Contrary to what has been reported in the press, this search functionality by the NIR, open to any health professional authorized to carry out vaccination operations, does not constitute a safety defect. The checks of several vaccination centers have however brought to light the fact that, for practical reasons inherent in the operation of these centres, the VACCIN COVID teleservice is regularly updated by administrative staff using the account of a healthcare professional. Although this mode of operation is similar to the usual work of a medical secretary, the operation continues in order to know if the requirements in terms of traceability and accountability of actions are respected. During the checks, the delegation observed : that only the data referred to in decree no. 2020-1690 of December 25, 2020 are processed and that there is no free comment area in the various teleservice modules, which strongly limits the risk of entering irrelevant data; that particular attention has been paid to informing people, in particular by setting up clear and complete indications of information a priori on the documents given to patients, a standardized display at the entrance to vaccination centers as well as the presence of hypertext links within the teleservice allowing the healthcare professional to easily access information relating to data protection that the COVID VACCINE treatment data is indeed encrypted and that access to the Covid Vaccination teleservice requires authentication with a health professional card (CPS) or by means of the eCPS application. This access is made from the AMELIPRO portal or from the Pro Santé Connect portal. The administrators of the servers connect to them in a secure way. The delegation was further informed that the other social security schemes carry out, for the purpose of pre-supplying the database of the VACCINE COVID treatment and at the request of the CNAM, campaigns targeting people eligible for vaccination and transfer this data to the CNAM via the PETRA secure exchange platform set up by the CNAM as part of its usual activities. The exploitation of the documentation relating to these targeting campaigns continues. Finally, it was indicated, during the checks, that data that the

CNAM considers to be de-identified are transmitted in a secure manner to the digital department of the social ministries (DNUM) for the purpose of producing vaccination coverage indicators.

D. Other control procedures

In addition to the controls carried out on the main information systems SIDEP , CONTACT COVID , TOUSANTICOVID and VACCIN COVID , the Commission also carries out checks on processing implemented by health actors in addition to the processing mentioned above. In particular, it has thus carried out checks on documents, still in progress, relating to the contact monitoring activity: concerning the processing operations called COVIDOM and COVISAN implemented by AP-HP, in particular through the intermediary of the site web Covidom.fr and the mobile application Covidom Patient; concerning the multi-channel support system called COVI CONTACT implemented by ARS Île-de-France and intended for all persons affected by isolation measures at home in order to be accompanied regularly and from a distance.

E. A continuous control procedure

The Commission recalls that the controls will continue throughout the period of use of the files, until the end of their implementation set for 31 December 2021 and the deletion of the data they contain. also recalls that the checks carried out always give rise to very regular and in-depth exchanges with the Ministry of Solidarity and Health for the SI-DEP system, but also with the other administrative bodies and users of the CONTACT COVID application (CNAM, ARS, health establishments, etc.) and the VACCINE COVID information system. This opinion is therefore only a summary of these exchanges and the findings made during the third phase of inspections. In this respect, a fourth phase of inspections has already been initiated for the second quarter of 2021. It mainly concerns on the points below. Concerning the SI-DEP processing, in addition to any technical modification likely to be made to the processing, checks on the nominal operation of the processing may take place, in particular with regard to retention periods or transmissions to the recipients. Concerning the CONTACT COVID processing, the checks should relate to: any changes to the procedure or the CONTACT COVID teleservice, in particular in relation to the variants; the information of zero patients and contact cases; the collection, transmission and storage of data collected from zero patients, contact cases and co-exposed within nursing homes, universities, establishments schools and local authorities; the effectiveness of the measures planned for the information and exercise of the rights of the persons concerned, in particular within universities and schools; the use of data from CONTACT COVID by other ARS as part of their level 3 contact follow-up mission. Regarding the COVID VACCINE treatment, checks will be carried out in the coming weeks to ensure the conditions for implementing the treatment, particularly in the vaccination centres. Concerning the TOUSANTICOVID treatment, the checks should relate to: the measures aimed at evaluating the effectiveness and usefulness of the application in the context of

the fight against the epidemic; the conformity of the new functionalities soon to be implemented, and in particular the introduction of the digital test and vaccination record as well as the future digital device for recording visits to certain establishments receiving from the public by means of a QR code. proof of vaccination within a specific CNAM teleservice and their possible access within the TOUSANTICOVID application. The next public notice from the Commission will report on the results of these checks. Finally, a final campaign of checks will be carried out after the implementation of the processing. On-site checks will thus be carried out with the organizations concerned, in order to verify in particular the effective deletion of the data. The checks should relate to the retention periods of the data, their deletion and/or their possible anonymization.

The President Marie-Laure DENIS

ANNEX 1: Description of the processing SI-DEP, CONTACT COVID, TOUSANTICOVID, VACCINE COVID, quarantine and isolation.

The SI-DEP treatment is a national information system implemented by the Ministry of Health which allows the centralization of the results of SARS-CoV-2 tests carried out by public or private laboratories or authorized health professionals. These results are transmitted to SI-DEP either automatically (4500 laboratories connected) or manually. This centralization then allows data to be transmitted to various recipients, in particular: to the regional health agencies (ARS) and to the Primary Health Insurance Fund (CPAM), with a view to carrying out investigations relating to contact cases, within the framework from the CONTACT COVID teleservice. to the Department of Research, Studies, Evaluation and Statistics (DREES) and to Public Health France in a pseudonymised form, for the purposes of epidemiological surveillance and the dissemination of statistical information. Health Data Platform (PDS) and the National Health Insurance Fund (CNAM) for the sole purpose of facilitating the use of health data for the purposes of managing the health emergency and improving knowledge on the virus. The CONTACT COVID processing implemented by the National Health Insurance Fund (CNAM) collects information on people identified as contacts at risk of contamination (contact case, or co-exposed persons) and the chains of contamination at three different levels. level 1); authorized health insurance personnel (or persons to whom this mission is delegated by the texts) (level 2): to complete and refine, if necessary, the Patient 0 sheet and the list of his contact cases; to call the contact cases to communicate to them the instructions relating to the isolation measures, tests and other actions to be taken; to the Regional health agencies (ARS) to ensure (level 3): their follow-up missions for contact cases; the management of situations requiring specific care. These include, for example, chains of transmission in schools, health establishments or youth centres. The STOPCOVID application, replaced by the TOUSANTICOVID application, is a mobile contact tracking application, based on volunteering people and using Bluetooth

technology, made available by the Government as part of its overall strategy of progressive deconfinement. It alerts users to a risk of contamination when they have been near another user who has been diagnosed or tested positive for covid-19. While in use, the smartphone stores a list of temporary aliases of devices it has encountered for 14 days (this is called proximity history). When a user is diagnosed or tested positive for covid-19, he can choose to declare himself in the application and, thus, send his contact data (pseudonymous business cards) to a central server. The transmission of this data to the server will only be possible with a single-use code given by a health professional following a positive clinical diagnosis or a QR Code given to the person at the end of his test. The server then processes each of the contacts listed in the proximity history and calculates the virus contamination risk score for each. A user's application will periodically query this server to see if one of the identifiers attached to it has been reported by a person diagnosed or screened for covid-19 and if the associated risk score reaches a certain threshold. Once notified that they are a contact, and therefore at risk, the person is notably invited to consult a doctor. COVID VACCINE treatment implemented under the joint responsibility of the Directorate General for Health and the National Insurance Fund disease (CNAM) aims to implement, monitor and manage vaccination campaigns against covid-19. It includes information on the people invited to be vaccinated or vaccinated in order to organize the vaccination campaign, monitoring and supply of vaccines and consumables (syringes, etc.), and carrying out pharmacovigilance research and monitoring. . This file is not based on the provisions applicable in the context of the state of emergency and is not intended to extend to vaccinations other than that against the SARS-CoV-2 coronavirus. The quarantine and isolation treatment implemented under the joint responsibility of the Minister for Health and the Minister of the Interior aims to monitor and control compliance with the individual measures mentioned in Article L. 3131-17 of the Code. of public health motivated by the arrival of people on the national territory, coming from a country or territory confronted with a particularly active circulation of the epidemic or the spread of certain variants of SARS-CoV-2 whose list is set by order of the Minister for Health.

ANNEX 2: List of Parliamentary hearings and opinions issued by the Commission

List of Commission hearings: April 3, 2020: interview with Mr. Cédric Villani, 1st Vice-President of the Parliamentary Office for the Evaluation of Scientific and Technological Choices (OPECST) for the preparation of a note relating to the information technologies used to limit the spread of the Covid-19 epidemic; April 8 2020: hearings before the National Assembly's law commission and before the two rapporteurs of the National Assembly's economic affairs commission; April 15, 2020: hearing before the Senate law commission; May 1, 2020: hearing before the rapporteur for the Senate Social Affairs Committee on the bill extending the state of emergency; May 5,

2020: hearing before the National Assembly's law committee on the bill extending the state of emergency ;October 8, 2020: hearing before the Parliamentary Affairs Committee of the Parliamentary Assembly of the Francophonie, as part of the preparation of a report on the use of geolocation in times of pandemic in the French-speaking world;November 25 2020: hearing before the fact-finding mission of the National Assembly's Law Commission on the legal regime of the state of health emergency; March 9, 2021: hearing before the Business Committee of the National Assembly on the second opinion on the operation of IS COVID-19; February 15, 2021: hearing before the senators who are members of the senatorial forward-looking delegation on the theme of the use of new technologies in the prevention and management of epidemics .April 30, 2021: hearing before the rapporteur on the bill relating to the management of the exit from the state of health emergency.List of opinions given on the four treatments SIDEPE, CONTACT COVID, VACCIN COVID and STOPCOVID/TOUSANTICOVID :Deliberation n° 2020-044 of April 20, 2020 of the CNIL issuing an opinion on a draft decree supplementing the decree of March 23, 2020 prescribing the organizational and operational measures of the health system necessary to deal with the COVID-19 epidemic in the context of the state of health emergency; Deliberation n° 2020-046 of April 24, 2020 of the CNIL giving an opinion on a mobile application project called StopCovid; May 8, 2020 providing an opinion on a draft decree relating to the information systems mentioned in article 6 of the bill extending the state of health emergency; Deliberation no. 2020-056 of May 25, 2020 providing an opinion on a draft decree relating to the mobile application called StopCovid;Deliberation n° 2020-083 of July 23, 2020 providing an opinion on a draft decree issued pursuant to article 3 of law n° 2020-856 of July 9, 2020 organizing the exit from the state of health emergency relating to the retention period of pseudonymised data collected for the purposes of epidemiological surveillance and research on the COVID-19 virus; Deliberation No. 2020-087 of September 10, 2020 issuing a public notice on the conditions for implementing information systems developed for the purpose of combating the spread of the COVID-19 epidemic (May to August 2020); Deliberation No. 2020-108 of November 5, 2020 providing an opinion on a draft decree amending decree no. 2020-551 d u 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; a draft decree authorizing the creation of personal data processing relating to the management and monitoring of vaccinations against the SARS-CoV-2 coronavirus; Deliberation no. 2020-135 of December 17, 2020 providing an opinion on a draft decree amending decree no. 2020-650 of May 29, 2020 relating to data processing called StopCovid; Deliberation no. 2021-004 of January 14, 2021 issuing a public notice on the conditions for implementing information systems developed for the purposes of fight

against the spread of the COVID-19 epidemic Deliberation n° 2021-006 of January 19, 2021 issuing an opinion on a draft decree amending decree n° 2020-551 of May 12, 2020 relating to the information systems mentioned in article 11 of law n° 2020-546 of May 11, 2020 extending the state of health emergency and supplementing its provisions. Deliberation n° 2021-055 of May 12, 2021 issuing an opinion on a draft decree creating the automated processing of personal data relating to the monitoring and control of compliance with certain measures taken on the basis of II of Article L. 3131-17 of the Public Health Code.

ANNEX 3: List of texts and their main contributions to the protection of personal data

Law n° 2020-546 of May 11, 2020 amended extending the state of health emergency and supplementing its provisions: authorizes, for the sole purpose of combating the covid-19 epidemic, the processing and sharing of personal health data within the framework of information systems created by decree in Council of State; Law n° 2020-856 of July 9, 2020 organizing the end of the state of health emergency: authorizes the extension of the retention period of pseudonymised data collected within the framework of systems SI-DEP and CONTACT COVID information programs for the purposes of epidemiological surveillance and research on the covid-19 virus; Law No. 2020-1379 of November 14, 2020 authorizing the extension of the state of health emergency and on various health crisis management measures and amending law n° 2020-546 of May 11, 2020: authorizes the extension of the duration of implementation of the CONTACT COVID and SI-DEP information systems until April 1, 2021 at the latest ; Extends the retention period of pseudonymised data processed for the purposes of epidemiological surveillance and research on the virus until April 1, 2021; The purpose of covid-19 SIs, relating to the identification of infected persons and the prescription and performance of biological examinations, is extended to the prescription and performance of serological or virological screening examinations, in order to take into account the evolution of the methods of carrying out screening examinations by authorized health professionals (list fixed by decree); Law n° 2021-160 of February 15, 2021 extending the state of health emergency: extends the maintenance of SIDEp files and ContactCovid until December 31, 2021 and authorizes the retention of pseudonymised data for the purposes of epidemiological surveillance and research on the covid-19 virus until December 31, 2021. 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 as amended extending the state of health emergency and supplementing its provisions: creation of SI-DEP and CONTACT CO processing VID; Decree No. 2020-650 of May 29, 2020 relating to the processing of data called STOPCOVID: establishes the STOPCOVID application; Decree No. 2020-1018 of August 7, 2020 taken pursuant to Article 3 of Law No. 2020 -856 of July 9, 2020 organizing the end of the state of health emergency and modifying decree n° 2020-551 of

May 12, 2020 relating to the information systems mentioned in article 11 of law n° 2020-546 of May 11, 2020 extending the state of health emergency and supplementing its provisions: extends to six months after the end of the state of health emergency the retention period for pseudonymised data collected within the framework of these information systems at for the purposes of epidemiological surveillance and research on the covid-19 virus; Decree No. 2020-1385 of November 14, 2020 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 s provisions: extension of covid-19 information systems until April 1, 2021 at the latest; extension of the reporting of results to all screening examinations (serological or virological) carried out by health professionals appearing on a list provided for by decree and authorized to carry out these tests; addition of collected data, persons accessing and recording the data, recipients of the data, etc. Decree No. 2020-1387 of November 14, 2020 establishing the list of health professionals authorized to inform the information systems mentioned in Article 11 of the law of May 11, 2020 extending the state of health emergency and supplementing its provisions: doctors, medical biologists, pharmacists and nurses. Decree no. 2020-1690 of December 25, 2020 authorizing the creation of data processing at personal character relating to vaccinations against covid-19: creates the VACCINE COVID information system aimed at enabling the running and monitoring of the vaccination campaign against the SARS-CoV-2 coronavirus. Decree No. 2021-48 of January 20, 2021 amending Chapter I of 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: strengthens the mechanism for tracing the chains of transmission of the virus by widening the scope of action of the CONTACTCOVID file in order to facilitate the carrying out of health investigations. Decree No. 2021-157 of 12 February 2021 amending Decree No. 2020-650 of May 29, 2020 relating to data processing called StopCovid: introduction of a digital device for recording visits to certain establishments open to the public and addition of new functionalities. Order of July 10, 2020 amended prescribing the general measures necessary to deal with the covid-19 epidemic in territories that have emerged from the state of health emergency and in those where it has been extended: regulates the centralization of data from SI-DEP and CONTACT COVID files within the Health Data Platform and the CNAM and their use (replaces and repeals the decree of April 21, 2020 supplementing the decree of March 23, 2020 prescribing organizational and functioning of the health system necessary to deal with the covid-19 epidemic in the context of the state of health emergency). Order of October 9, 2020 modifying the order of July 10, 2020 prescribing the general measures necessary to deal with the

covid-19 epidemic in the territories that have emerged from the state of health emergency and in those where it has been extended; Order of October 16, 2020 modifying the order of July 10, 2020 prescribing the general measures necessary to deal with the covid-19 epidemic in the territories that have emerged from the state of health emergency and in those where it has been extended: The data can only be processed for projects pursuing a purpose of public interest in connection with the current epidemic of covid-19 and until the entry into force of the provisions taken pursuant to article 41 of the law. of July 24, 2019 referred to above (SNDS decree) - deletion of the deadline of October 30, 2020 for processing data. required to deal with the covid-19 epidemic in the context of the state of health emergency

ANNEX 4: List of organizations controlled since May 2020

SI-DEP treatment: The Ministry of Solidarity and Health; Public Hospital Assistance de Paris (AP-HP); Private medical biology laboratories; Pharmacies carrying out antigenic tests; COVID CONTACT treatment: The National Health Insurance Fund (CNAM); A health establishment receiving patients for consultation; Primary Health Insurance (CPAM); Regional Health Agencies (ARS); The National Council of the Order of Physicians (CNOM); The National Council of the Order of Pharmacists (CNOP). STOPCOVID / TOUSANTICOVID treatment: The Ministry of Solidarity and Health; The National Institute for Research in Digital Sciences and Technologies (INRIA); SI-VACCIN treatment: The National Health Insurance Fund (CNAM); vaccination at the Stade de France; The vaccination center at Melun; _____(1) The data of co-exposed people are defined as those who were at the same time as a patient diagnosed positive for COVID-19 in the same place , gathering or event, where the barrier measures could not be fully respected during the last fourteen days. 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.(3) The CNIL considered that this information was likely to reveal the exact nature of the gathering, event or activity. It considered that in the absence of any specific justification concerning the need for such information for carrying out health surveys, this collection did not comply with the principle of minimization imposed by the GDPR.(4) The CNIL recalled that regulatory provisions cannot release the professionals concerned from their legal obligation of professional secrecy.(5) co-exposed persons, managers or organizers of a place or structure open to the public, of a gathering , an activity or an event that the patient has attended or in which he has participated in the last fourteen days and to persons and authorities having relevant information for the search for contact cases and co-exposed persons. (6) Indeed, these will now enter into the common law of the national health data system, which will allow data to be stored for up to twenty years (4° of IV of Article L. 1461-1).(7) On December 17, 2020, the system on which the

Commission issued its opinion provided for the provision, by managers of ERPs, of QR codes that people are invited to scan, entrance or inside these premises, with the TOUSANTICOVID application. These QR codes and the relevant time slot are saved in the app. It was planned that when a user reported himself as positive for the virus, the list of scanned QR codes, which therefore represents the list of ERPs he visited, was uploaded and stored on a central server. Other users' apps periodically poll the server, sending the history of frequented locations stored in the app. The server estimated the risk of exposure and notified, where appropriate, users that they may have been exposed in one of the high-risk places they visited.

(8) In the new protocol, dubbed CLEA, only users declaring themselves positive for the COVID-19 virus in the application transmit their QR code history to the server. This maintains a public list of risky places which is regularly downloaded by users so that they can compare these places with their own history of places visited stored locally on their terminal.(9) User traffic information of the virus at national and local level, storage of personal data on their smartphone in order to generate supporting documents required by public authorities, etc.(10) Deliberation no. 2020-087 of September 10, 2020 issuing a public notice on the conditions implementation of information systems developed for the purpose of combating the spread of the covid-19 epidemic (May to August 2020)(11) Deliberation no. 2021-004 of January 14, 2021 issuing a public notice on the conditions of implementation of information systems developed for the purpose of combating the spread of the COVID-19 epidemic (September to December 2020)(12) See Annex 1 for the description of processing(13) Articles L. 1432-1 et seq. of the Public Health Code(14) Interministerial Circular No. DGCS/DIRECTION/2021/16 of January 14, 2021 relating to the new isolation support system by the territorial support cells at isolation.