

Deliberation 2021-096 of August 6, 2021 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

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n° 2021-096 of August 6, 2021 providing an opinion on a draft decree amending decree no. 2020-551 of May 12, 2020 relating to the information systems mentioned in article 11 of law no. 2020-546 of May 11, 2020 extending the state of health emergency and supplementing its provisions and decree no. 2020-1690 of December 25, 2020 authorizing the creation of personal data processing relating to vaccinations against covid-19 (request for opinion no. 21013690) The National Commission for IT and freedoms,

Seizure by the Minister for Solidarity and Health of a request for an opinion concerning a draft decree amending decree no. 2020-551 of May 12, 2020 relating to the information systems mentioned in article 11 of law no. ° 2020-546 of May 11, 2020 extending the state of health emergency and supplementing its provisions and Decree No. 2020-1690 of December 25, 2020 authorizing the creation of personal data processing relating to vaccinations against covid -19;

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR);

Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms;

Having regard to law n° 2021-1041 of August 5, 2021 relating to the management of the health crisis;

Considering the decision of the Constitutional Council n° 2021-824 DC of August 5, 2021;

After hearing the report of Mrs Marie-Laure DENIS, President, and the observations of Mr Benjamin TOUZANNE, Government Commissioner, Issues the following opinion:

On July 27, 2021, the National Commission for Computing and Freedoms (hereinafter the Commission) was urgently seized of a draft decree amending, on the one hand, Decree No. 2020-551 relating to computer systems. information Contact Covid, SI-DEP and the processing implemented by the regional health agencies (ARS) and, on the other hand, decree no. 2020-1690 relating to the Covid Vaccine information system. to: - complete the purposes pursued by the Contact Covid, SI-DEP information systems as well as by the processing implemented by the ARS to allow monitoring and control of compliance with the new isolation measures imposed on people tested positive for covid-19;

- extend the retention period of certain data collected within SI-DEP in application of the law;

- complete the purposes pursued by the Covid Vaccine information system in order to allow the regional health agencies (ARS) to receive the list of non-vaccinated professionals subject to the vaccination obligation provided for by law;
- add new categories of recipients to the aforementioned information systems for the purpose of implementing these checks.

With regard to the changes resulting from the addition of a purpose relating to the monitoring and control of isolation measures, the Commission takes act that the ministry will modify this draft decree in order to take into account the decision of the Constitutional Council of August 5, 2021 declaring articles 7.1° and 9 of the law relating to crisis management to be unconstitutional sanitary.

The information of the persons concerned by these systems and the related control procedures constitutes an essential guarantee to enable them to have the necessary information and the means to assert their rights. In this regard, the Commission asks the Ministry, the CNAM and the ARS to inform the professionals concerned by the vaccination obligation of the procedures for monitoring compliance with this obligation.

Thus, beyond its opinion on this draft decree, the Commission will be particularly attentive to the conditions for the implementation of this processing, which will have to be the subject of data protection impact analyzes to be made available day pursuant to Article 35 of the GDPR.

In this regard, the Commission notes that the proliferation of personal health data processing linked to the management of the health crisis increases the risks to the security of this data and recommends to the various actors concerned (ministry, regional directorates of the medical service , ARS) to carry out an overall risk analysis, of the EBIOS-RM type, in order to determine the technical and organizational measures necessary to ensure the protection of this data.

In addition, it recommends that the various players carry out a frequent review and update of the authorizations of the agents concerned, as well as a frequent and appropriate purge of their mailboxes and work directories. On the changes made to the IS information system -DEP relating to the extension of the retention period for the data of persons tested positive for covid-19 The draft article 11 of decree no. 2020-551 distinguishes, among the personal data contained in the processing SI-DEP :- data relating to a person who has been the subject of a screening examination for covid-19 concluding that there is contamination, which may be kept for a period of six months after their collection;

- other data, the retention period of which remains unchanged (three months). This modification draws the necessary consequences from the law. The extension to six months of the storage period in the event of a positive test is linked to the

period during which certificates of recovery can be established pursuant to Article 2-2 of Decree No. 2021-699. On the modifications made to the Covid Vaccine information system (SI Vaccin Covid ) Article 12 of the law establishes an obligation to vaccinate against covid-19 for professionals in direct contact, in the exercise of their professional activity, with the most vulnerable people , as well as to those who work within the same premises, the list of which is exhaustively enumerated. Article 13 of the law provides that professionals subject to this obligation establish that they have satisfied it by presenting, in particular, proof of their vaccination status and that those who are not subject to this obligation due to a contraindication must present a medical certificate. When they are employees or public officials, these supporting documents or certificates are sent by the professionals concerned to their employers. In other cases, in particular for the liberal professions, it is expected that the competent ARS will access data relating to the vaccination status of these same people, with the assistance of local health insurance organizations, in order to monitor compliance with this obligation. These checks can only be carried out from the date of entry into force of the vaccination obligation in accordance with the provisions of article 14 of the law.

The draft decree submitted for opinion to the Commission aims to allow the ARS to access this data in order to verify that the professionals concerned have indeed fulfilled their vaccination obligation. On the addition of a purpose relating to the provision regional health agencies from the list of non-vaccinated professionals subject to the vaccination obligation Draft article 1.7° of decree no. 2020-1690 provides that the Vaccin-Covid information system may be implemented for the purposes of provision of data allowing the control of the vaccination obligation of professionals who are not employees or public officials.

The changes introduced by this draft decree modify the initial purpose of these processing operations since they allow the use of data collected for the purpose of monitoring vaccination to check compliance with the vaccination obligation for professionals. These controls involve the implementation of subsequent processing of personal data by several data controllers.

The Commission considers that the processing implemented by the Ministry of Solidarity and Health, the CNAM for the purpose of providing the data necessary for monitoring compliance with the vaccination obligation by the ARS fall within the scope of the GDPR. since the follow-up to the checks will not be collected in this processing and the direct consequence of the processing consists of a ban on practicing and not a criminal sanction. On the categories of data transmitted to regional health agencies The draft article 3 of the decree no. 2020-1690 provides that the agents of the ARS specially authorized by the directors general of these agencies are made recipients of certain data mentioned in 1°, 3° and 5° of I of article 2 of the draft

decree, necessary the control of the vaccination obligation (surname, first names, date and place of birth, NIR or, if applicable, admission code for the benefit of State medical aid under the mention registration; coord postal, electronic and telephone data of the person concerned as well as, where applicable, of his legal representative, as well as certain data relating to the performance of the vaccination).

These data, collected and recorded in the context of medical care, are protected by medical secrecy. Article 13 of the law necessarily implies that the ARS can know for this purpose data in principle covered by medical secrecy provided for in Article L. 1110-4 of the Public Health Code. This derogation from the principle of medical secrecy leads to the sharing of very sensitive data likely to concern part of the French population; the Commission therefore insists on the importance of the management of authorizations, which should limit access to these data only to agents who need to know, namely those involved in monitoring compliance with the vaccination obligation.

The Commission understands from the clarifications provided by the Ministry that the procedure for monitoring the vaccination obligation will be as follows:

- the identification data contained in the Covid Vaccine information system will be crossed by the CNAM with the data from the national file of health professionals (FNPS), created by a decision of the CNAM, thanks to the NIR, in order to identify professionals subject to the vaccination obligation who have not fulfilled this obligation;
- the lists of non-vaccinated liberal health professionals (including the surname, first names, practice address and RPPS number) will be sent by secure messaging to the local health insurance organizations (regional directorates of the medical service - DRSM);
- these organizations will then send these files to the specially authorized agents of the ARS. The Commission stresses that these lists are not intended to be sent to all the ARS: each ARS should only receive the data it actually needs. Thus, when the control results only in exchanges with the professional concerned, only the territorially competent ARS should be the recipient of information on his vaccination status. If other actions of the ARS, with certain places of practice or certain professions, were to be carried out in application of article 13 of the health crisis management law, it would be advisable to ensure that the relevant data are made accessible, as far as possible, only to interested ARSs.

Given the details provided by the Ministry on, on the one hand, the nature of the data necessary for the interconnection of the FNPS and the Vaccin-Covid IS (the NIR) and for the consultation of the vaccination status as well as, on the other hand , on

the nature of the data transmitted to the regional health agencies (surname, first names, exercise address and registration number in the shared directory of health professionals - RPPS), the Commission wonders about the relevance of the collection of other data referred to in draft article 3 of the decree, in particular with regard to the sex as well as the dates and places of birth of the professionals.

In accordance with the principle of minimization provided for in Article 5 of the GDPR, only data that is adequate, relevant and limited to what is necessary with regard to the purposes for which they are processed may be transmitted to ARS agents. In application of this principle and for the purposes of transparency vis-à-vis the persons concerned, the Commission asks the Ministry to specify in the decree the precise list of data that can be transmitted to the ARS in this context. of the national file of health professionals This file was created by a decision of March 17, 2004 of the chairman of the board of directors of the CNAM, which determines the essential characteristics of the treatment implemented.

Regarding the purposes, the FNPS was created for the purposes of managing personal information relating to health professionals for the pricing of their services, monitoring the application of agreements, risk management, information of users on the management of acts as well as automation of compensation for training costs.

The Commission considers that, since the FNPS file is governed by rules set by a decision of the CNAM, it is necessary for the CNAM to verify that the use it is planned to make of it complies with these rules. . In the light of the information at its disposal, the Commission considers that the CNAM must at least modify the decision of March 17, 2004 before using this file to compile lists of unvaccinated persons. This use must also be documented in the CNAM's personal data processing register.

Regarding reused data, the Commission notes that only the following data from the FNPS will be reused for the purpose of compiling lists of non-vaccinated professionals:

- the RPPS number. In this regard, it draws the Ministry's attention to the fact that this data is not covered by the aforementioned decision;
- the professional practice address of the professional's main place of establishment. As regards the recipients of the FNPS, the Commission notes that while local health insurance organizations are qualified as recipients of the FNPS, this is not the case for ARS. However, it considers that, given the current health context and the obligations introduced by legislative provisions, the ARS may, on a temporary basis and for a period strictly necessary for monitoring compliance with the vaccination obligation for health professionals, be recipients of the data stored in this processing.

Regarding the procedures for informing the professionals concerned, the Commission notes that:

- the Vaccine-Covid information system only includes the data of persons eligible for vaccination (unless opposed by the person concerned pursuant to Article 5-II 1° of Decree No. 2020-1690) and vaccinated persons ;
- Article 10 of the decision creating the FNPS provides that it is brought to the attention of health professionals by means of publications which are regularly sent to them. The persons concerned by these two treatments are not identical, in consideration of the sensitivity of the purpose pursued and in view of the reconciliation of these two information systems, the Commission insists on the need for the CNAM, in its capacity as data controller of the FNPS, and the ARS, in their capacity as recipients of data , inform all health professionals of the use of this file for the purpose of compiling a list allowing the ARS to ensure compliance with the vaccination obligation. It asks that article 3 of the draft decree be supplemented in this sense.

The Commission asks the Ministry and the CNAM to inform the persons concerned by the FNPS of the reuse of their data in accordance with the provisions of the GDPR. Finally, it draws their attention to the need to provide for the procedures for exercising the rights of the professionals concerned by this processing. On the retention period of the data The Commission points out that the lists of non-vaccinated professionals should only be kept in a form allowing the identification of data subjects only for a period not exceeding that necessary for the purposes for which they are processed, in accordance with Article 5.1.e of the GDPR. In accordance with the provisions of article 13 of the law, the ARS can keep the results of the verifications of satisfaction with the vaccination obligation against covid-19 until the end of the vaccination obligation.

Since the lists of non-vaccinated professionals will be transmitted by secure messaging, it recommends that particular attention be paid to the procedures and to the awareness of the agents of the regional directorates of the medical service (DRSM) and the ARS who will have to respect the durations of conservation of data, in particular by the appropriate purging of messaging systems and storage directories for list files. In particular, it considers that the DRSM agents will have to erase the lists as soon as they are acknowledged by the recipient ARS.

Finally, it includes exchanges with the ministry that the lists of unvaccinated professionals will be automatically transmitted to the ARS according to a frequency to be defined. In view of the daily progress of vaccination, the Commission considers it necessary to regularly send the lists, ensuring that only their most recent version is kept by the recipients, so that the vaccination status of the professionals concerned is the as up to date as possible and not to solicit professionals who have just been vaccinated.

The president,

M. L. Denis