Deliberation 2021-004 of January 14, 2021Commission Nationale de l'Informatique et des LibertésNature of the deliberation: OpinionLegal status: In force Date of publication on Légifrance: Thursday December 23, 2021Deliberation n° 2021-004 of January 14, 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 (request for opinion no. 210000315)The National Commission for Computing and Freedoms, Having regard to convention no 108 of the Council of Europe for the protection of individuals with regard to the automatic processing of personal data; Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 relating to the protection of individuals with regard to the processing of personal data and the free movement of such data, and repealing Directive 95/46/EC (RGPD); Having regard to Law No. 78-17 of 6 January 1978 as amended relating to the 'computer science , files and freedoms; Having regard to law n° 2020-546 of May 11, 2020 as amended extending the state of health emergency and supplementing its provisions, in particular its article 11; Having regard to law n° 2020-856 of July 9, 2020 organizing the end of the state of health emergency; Having regard to law n° 2020-1379 of November 14, 2020 authorizing the extension of the state of health emergency and carrying various measures for managing the health crisis; Having regard to decree n ° 2019-536 of May 29, 2019 amended taken for the application of law n ° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Considering decree n ° 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; Having regard to Decree No. 2020-650 of May 29, 2020 relating to the processing of data called STOPCOVID; Considering the decree n ° 2020-1018 of August 7, 2020 taken in application of article 3 of the law n ° 2020-856 of July 9 let 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; Having regard to 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 its provisions; Having regard to Decree No. 2020-1387 of November 14, 2020 establishing the list of health professionals authorized to inform the health systems information mentioned in article 11 of the law of May 11, 2020 extending the state of health emergency and supplementing its provisions; Having regard to decree no. 2020-1690 of December 25, 2020 authorizing the creation of a processing of personal data personnel relating to vaccinations against covid-19; Having regard to the decree of July 10, 2020 as amended é prescribing

the general measures necessary to deal with the covid-19 epidemic in the territories which have emerged from the state of health emergency and in those where it has been extended and in particular its article 30; After having heard Mrs Marie-Laure DENIS, President, in her report, and Mr. Benjamin TOUZANNE, Government Commissioner, in his observations;Issuing the following opinion:As part of the progressive deconfinement strategy, the law of May 11, 2020 on the extension of the state health emergency has authorized the temporary creation of two national files: SI-DEP and CONTACT COVID1. This processing of personal data is governed by a decree in Council of State of May 12, 2020 recently modified and which specifies their methods of creation and implementation. Alongside these files, the mobile application STOPCOVID, whose processing is governed by decree no. 2020-650 of May 29, 2020, has been deployed. This has now been replaced by the TOUSANTICOVID mobile application. In an exceptional context of health crisis and emergency, the Commission has had to rule on several occasions on the normative framework governing this processing: heard six times and having issued nine opinions since May 20202, it has thus usefully shed light on the parliamentary debates on fundamental issues related to respect for privacy and personal data. The Commission has also carried out 25 checks since the implementation of these systems. Its recommendations and findings were detailed in its first opinion, dated September 10, 2020, on the operation of these information systems3. This second opinion of the Commission, issued on the basis of Article 11 of the law of 11 May 2020 as amended, completes the second quarterly report of the Government which will be sent to Parliament and of which the Commission has not yet been informed. This opinion will focus, in particular with regard to the recommendations it has issued in its opinions on the draft texts submitted to it since August 2020 and its findings during the various checks carried out, to recall the recent changes in the normative framework and to assess:the interest of these treatments with regard to the health situation as described by the Government;the operational conditions for implementing these treatments.CHANGES IN THE NORMATIVE FRAMEWORK AND OPINION OF THE CNILIn accordance with the law, the opinion of the Commission was requested by the Government on changes to the texts governing the implementation of processing related to the health crisis.The Commission's opinion on the changes made to the SI-DEP and CONTACT COVID information systemsThe Commission had , in its opinion of September 10, 2020 on the operation of information systems, recalled that it should be informed of any changes that may be made thereto. received, urgently, on November 3, 2020, a draft decree amending decree no. 2020-551 of May 12, 2020 setting the terms under which the information systems provided for in article 11 of law no. 2020-446 of May 11, 2020 extending the state of health emergency can be implemented. The decree provided in particular:

the extension of the duration of implementation of the CONTACT COVID and SI-DEP information systems until the date mentioned in Article 11 of Law No. 2020-546 of May 11, 2020, i.e. until April 1, 2021 at the latest; the extension of the retention period for pseudonymised data processed for epidemiological surveillance purposes and research on the virus until the date mentioned in article 11 of law no. 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. In its opinion of November 5, 20205, the Commission reiterated certain remarks made in its opinion of May 8, 2020, in particular with regard to: the sensitive nature, by nature, of the implementation such devices which allow in particular the processing and sharing of health data, which can be consulted by a large number of actors and requiring additional protection; the invasion of privacy by such processing, which is not admissible that if this policy constitutes a necessary and appropriate response to slow the spread of the epidemic, implying that their necessity is periodically reassessed in the light of the evolution of the epidemic and scientific knowledge; the sufficient guarantees that must be provided, whatever regardless of the emergency context, with regard to respect for the fundamental principles of the right to the protection of personal data. It also recalled that: guarantees s must be implemented with regard to the use by national and local health insurance bodies, the National Military Social Security Fund and other social protection bodies of subcontractors and temporary workers for registration and consultation of all the data collected. In particular, it took note of the Ministry's undertaking to draw up an exhaustive list of subcontractors to be used and requested that the data controller use, for the processing of data, subcontractors falling exclusively within the jurisdictions of the European Union and that no transfer of data is carried out outside the European Union; for persons who may consult, register or be recipients of the data: clear and uniform instructions – containing the instructions of the health authorities – must be given to all stakeholders and their subcontractors as to the definition of the various concepts used in the draft decree which justify the collection of data. Regular training and awareness-raising of the personnel who are required to intervene are indeed essential; it is necessary to define an adequate authorization management policy and to implement strong authentication measures so that only those who need know about them access the information systems, the ministry having been called upon to be vigilant on this point; all the information media relating to the processing must be modified in order to take into account the changes made and that all the persons concerned must be informed. In its opinion, the Commission also questioned the compatibility of the legal retention period for pseudonymised data from CONTACT COVID and SI-DEP transmitted for the purposes of epidemiological surveillance and research on the virus6 , with the hypothesis of their integration into the national

health data system, the retention period of which is twenty years s pursuant to Article L. 1461-1-IV-4° of the Public Health Code, or their storage in a permanent warehouse within the Health Data Platform7. Finally, it asked that the impact assessments relating to data protection (DPIA) carried out pursuant to Article 35 of the GDPR and updated accordingly be sent to it. In this respect, the Commission recalls that in application of Article 67 of the amended Data Protection Act (LIL), the processing of personal data implemented in the field of health by the regional health agencies (hereinafter ARS) and whose sole purpose to respond to a health alert and to manage its consequences, must be the subject of a DPIA. implementation of health data processing without carrying out prior formalities with the Commission, in particular the ARS of the CONTACT COVID system, end one year after the creation of the processing. Formalities will therefore have to be carried out with it in the event that the data processing is implemented for more than one year. Certain observations of the Commission relating to the CONTACT COVID processing have been followed, with regard to the guarantees provided. the use of subcontractors by social protection organizations as well as the removal of access by all health professionals and authorized personnel of a health or social and medico-social establishment to the data of the people taken care of by the establishment, in order to limit access to the data of persons actually cared for by these professionals and personnel. been clarified, thus responding to the requests made in its opinions of 8 May 2020 and 23 July 2020. It notes, however, that certain remarks rnant SI-DEP processing have not been taken into account, and more particularly with regard to the addition of the data retention period by the Public Health Information Service (SPIS) and the clarification that the collection of the postal code of the place in which the person plans to stay during the seven days following the completion of the screening is necessary in order to determine the territorially competent ARS to carry out health investigations and to allow the National Public Health Agency France to 'carry out precise geographical statistics. The VACCIN COVID information system The Commission was asked for an opinion on November 30, 2020 by the Ministry of Solidarity and Health of a draft decree in Council of State authorizing the creation of an information system (IS) for the implementation, monitoring and management of vaccination campaigns against covid-19 called VACCIN COVID (SI VACCIN COVID). This data processing, implemented under the joint responsibility of the Directorate General for Health and the National Health Insurance Fund (CNAM), is intended to identify persons eligible for vaccination with regard to the recommendations of the Minister of health, the management of the vaccination campaign, the provision of data for the purposes of calculating indicators and research, the delivery of information to the persons concerned in the event of a new risk and their orientation towards a course of appropriate care, financial coverage of acts related to vaccination. The CNIL, in its

opinion of December 10, 2020, noted that this IS is not based on the provisions applicable in the context of the state of emergency and that it is not intended to extend to other vaccinations than that against the SARS-CoV-2 coronavirus. She also noted that in the long term, when the vaccination campaign will be extended to the entire adult population as envisaged by the ministry, the SI VACCIN COVID will include certain health data from a major part of the French population. Indeed, this processing will be fed, as the eligibility for vaccination is extended, by successive payments of data from the databases of the compulsory health insurance schemes and supplemented by health professionals. thus recalled: that the provisions of the Public Health Code relating to medical secrecy apply to the data processed within the framework of this IS and that only authorized persons and subject to professional secrecy will be able to access it within the strict limits of their need to know about it for the exercise of their mission; that a DPIA must be carried out before the implementation of the processing. It invited the Government to specify in particular: the other information systems with which the SI VACCINE COVID would be put in relation and the possible use of subcontracting. If necessary, the Commission invited the Ministry to disseminate this information, for example by making it public on its website; for the purposes of transparency, the list of pseudonymised data that may be transmitted to identified recipients; that no data processed in the framework of this IS would not be transferred outside the EU; only the registration number in the national identification directory of natural persons (NIR) would be processed. If these clarifications were not made to Decree No. 2020-1690 published on December 25, 2020, modifications have however been made with regard to the information of the persons concerned. In its opinion, the Commission had insisted on the perfect information of the people, in particular concerning the exercise of their rights. The decree has been clarified with regard to the information that will be provided to persons invited to be vaccinated, to those who have consented to vaccination and to healthcare professionals taking part in vaccination. The Commission has also been monitored with regard to the possibility for people to exercise their right of opposition until they express their consent to vaccination, as well as for the use of their data for research purposes. In practice, the right of opposition may be exercised by the persons concerned after receipt of the vaccination vouchers and, where applicable, until the consent to vaccination has been obtained by a healthcare professional. Once the consent to vaccination has been expressed, the persons concerned may only oppose the transmission of their data to the CNAM and the Health Data Platform for research purposes. The Commission considers that once the vaccination has been carried out, the processing of data meets an important objective of public interest, in particular in the context of pharmacovigilance. The Commission has specified that it will be vigilant as to the conditions for implementation of

the SI VACCIN COVID and that it will exercise its power of control. The TOUSANTICOVID mobile application On October 22, 2020, the Government deployed a new version of its application for tracing contact cases to fight against the spread of covid-19 in France.The application has undergone changesThe TOUSANTICOVID application, which replaces STOPCOVID 8, has undergone successive changes following the Government's announcements on October 22, 2020. The contact tracing application now provides updated information on the circulation of the virus and links to other government digital tools (MesConseilsCOVID, DépistageCovid, etc.). Since November 3, 2020, the application has also made it possible to generate, on the user's telephone, a derogatory travel certificate and allows the latter to select an option in order to locally save some of their data (name, date and place of birth, address) to facilitate future generations of the certificate. Moreover, beyond enhanced communication around the TOUSANTICOVID application, the Government is changing its usage doctrine for its users in order to raise awareness on its use in risky situations, when the latter are unable to ensure compliance with barrier gestures (wearing a mask, respect for social distancing, etc.). However, the structuring elements of the device are not impacted by the evolutions of the application. Thus, the ROBERT protocol, designed with a logic of data minimization and protection from the design stage, remains the one used by the TOUSANTICOVID application. Like STOPCOVID, the application is based on a voluntary approach by people and allows contact tracing, thanks to the use of Bluetooth technology, without requiring geolocation of individuals. CNIL considers that it is not appropriate to regulate the new functionalities of the TOUSANTICOVID application presented above9, it will remain vigilant as to the possible evolutions of a device which has posed new questions in terms of data protection. personal and respect for privacy. It recalls in particular that it can initiate new checks, if necessary, and that it should decide again if the processing of data were to be subject to substantial modifications. In particular, the Commission issued an urgent opinion on December 17, 2020 on a draft decree amending decree no. 2021-650 of May 29, 2020 relating to the processing of data called STOPCOVID, which may only be published after publication of the aforementioned decree. ON THE MAINTENANCE OF THE DEVICES WITH REGARD TO THE PRINCIPLES OF NECESSITY AND PROPORTIONALITY Article 11 of the law of May 11, 2020 was amended by the law of November 14 2020 in order to allow the CONTACT COVID and SI-DEP information systems to be maintained for the duration strictly necessary for the objective of combating the spread of the covid-19 epidemic or, at the latest, until April 1 2021. As a reminder, the maximum duration for maintaining this processing was initially set by law at January 11, 2021. The CNIL recalled, in its opinion of September 10, 2020 on the operation of Covid-19 information systems, the derogatory nature of the various treatments

implemented, which can only be justified if their usefulness is sufficiently proven with regard to the health evolution of the country. It also recalled that the constitutional and conventional protections of the right t respect for private life and the protection of personal data, based in particular on the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms, require that infringements of these rights by the public authorities are not only justified by a reason of general interest, as is the case here, but are also necessary and proportionate to the achievement of this objective. It had thus regretted that the Government report sent to Parliament on September 9, 2020 does not mention more specific elements justifying the need to maintain these treatments in view of the health context at the time. It therefore asked to have performance indicators for the information systems deployed, in order to be able to measure their effectiveness with regard to the objectives pursued and an analysis grid established with regard to health efficiency indicators.The request of the Commission was taken into account when Article 11 of the law of May 11, 2020 was amended by the law of November 14, 2020, which specifies that the Government's quarterly report to Parliament on the application of these measures must include: indicators of activity, performance and quantified results adapted to the priorities selected . With regard to the usefulness and effectiveness of the TOUSANTICOVID application on the overall health strategy, the Commission recalls that it had requested, in its opinion of 25 May 2020, that the effective impact of the device on the strategy overall health is studied and documented by the Government on a regular basis throughout its period of use. As such, it had invited the Government, in its quarterly opinion of September 10, 2020, to establish an analysis grid with regard to health efficiency indicators. Firstly, beyond an increase in the number of downloads of the application since the release of the TOUSANTICOVID version, the Commission notes that the number of users declaring themselves to have been screened or diagnosed with covid-19 as well as that of users notified have increased significantly10. Furthermore, it notes the fact that the impact of changing the parameters for notifying risky contacts (criteria of distance and duration of contact with regard to the risk of contamination11) on the number of users notified is particularly significant. secondly, the Commission observes that the application has been enriched with new functionalities: information for users on the circulation of the virus at national and local level as well as on measures or actions for promotion, prevention and health education, orientation of users to other digital tools implemented for the management of the epidemic, etc. It considers that increasing the population's adherence to the application is likely to contribute to strengthening its health usefulness, subject to its activation. Thirdly, questioned on this point during the November 2020 checks, the Ministry of Solidarity and Health indicated that a study entitled COVID-19:

identification of digital expectations, levers for downloading and using the STOPCOVID app was published by KANTAR in the month of August 2020. In addition, the Commission notes that the app made mention, through the recent news feeds feature, of a study by the National Institute of Health and Medical Research (INSERM) relating the effectiveness of the application in the overall health strategy published in October 2020. The Commission takes note of this and considers it essential to develop initiatives and indicators to fully assess the effectiveness of health ire of the system in the context of the fight against the covid-19 epidemic. In this regard, it considers in particular that the metrics of the application relating to its effectiveness (number of users declared positive as well as those notified via the application) could be compared with those of the CONTACT COVID and SI-DEP information systems. in order to assess the usefulness of the device on the overall health strategy. In addition, consideration could be given to adding a mention in CONTACT COVID to identify whether the person was informed only by the TOUSANTICOVID application, or both by the application and by manual tracking methods.

ASSESSMENT OF THE COMMISSION ON THE OPERATIONAL CONDITIONS FOR IMPLEMENTING PROCESSINGIn accordance with what had been developed in the context of the deliberation of September 10, 202012, the Commission continued to conduct numerous investigations around the SI-DEP and CONTACT COVID and the TOUSANTICOVID application. These verifications of the concrete conditions of implementation were carried out within the framework of online checks, on hearing, on documents and on site. A total of twenty-five control operations were carried out between May and November 2020: six concerning SI-DEP, twelve concerning CONTACT COVID, seven concerning TOUSANTICOVID (including those carried out on STOPCOVID). This opinion includes summary elements from the findings made by the Commission in the context of the second phase of verifications which took place from September to November 2020. It also reports on the regular exchanges which took place with the Ministry of Solidarity and health, the CNAM and the ARS during this period.A. Control of SI-DEP and CONTACT COVID files Investigations of SI-DEP and CONTACT COVID processing have continued to be carried out simultaneously since September 2020. For SI-DEP processing, an on-site check and additional investigations have taken place since the publication of the Commission's first opinion, with the Assistance Publique des Hospitals de Paris (AP-HP), which ensures the operational implementation of the SI-DEP treatment. For the CONTACT COVID treatment, checks on hearing, online and on site took place with the CNAM, a primary health insurance fund (CPAM) and two ARS. Checks on documents with the National Council of the Order of Physicians (hereafter CNOM) and the National Council of the Order of Pharmacists (hereafter CNOP) were also carried out. The verification points mainly concerned: the

procedures for informing people; the security of information systems; data flows and recipients; the procedures for storing data. The SI-DEP file As a reminder, the SI-DEP file is an information system national screening system headed by the minister responsible for health (general directorate for health). The SI-DEP file allows the centralization of the results of the SARS-CoV-2 coronavirus tests carried out by public or private laboratories or authorized health professionals, in order to make them available to the organizations responsible for determining the people who have been in contact. with infected people, to carry out health investigations in the presence of grouped cases to break the chains of contamination, to guide, monitor and support the people concerned, and to facilitate epidemiological monitoring at national and local levels and research on the virus as well as the means of combating its spread. The SI-DEP processing control operations carried out in October and November 2020 were mainly intended to verify compliance with the data retention period set by the aforementioned decree , as well as the procedures for transmitting health data to the platform referred to in Article L. 1462-1 of the Public Health Code (known as Healt h Data Hub). In line with its previous observations, the Committee once again noted the importance of the efforts made by the Ministry of Solidarity and Health and the AP-HP to ensure that the SI-DEP processing complies with the applicable provisions. These efforts must be analyzed in the light of the large volume of data processed (more than 16 million tests carried out between May and October 2020), from numerous sources, and intended for several actors such as the CNAM, Public Health France, each having a specific method of receiving files. The delegation thus noted a satisfactory level of compliance with regard to compliance with data retention periods. Discussions with the Directorate General for Health also revealed that the comments made by the Commission at the end of the first phase of control in September have been taken into account by the services concerned. An action plan has been defined and is being deployed concerning the management of certain user accounts and the traceability of access. Finally, the transmission of data to the health data platform having been postponed by the Government, it does not was not yet effective during the on-the-spot checks carried out by the Commission in October. It was nevertheless noted that the technical methods of this transmission are already configured and, at this stage, appear to ensure a sufficient level of confidentiality of the data before they are communicated to the CNAM, in charge of uploading the data to the platform. .In the current state of the checks, the Commission considers that the conditions for implementing the SI-DEP file do not call for any particular measure on its part.The Covid Contact File As announced by the Commission in the context of its previous notice, the checks carried out between September and November 2020 focused on the procedures for implementing the CONTACT COVID treatment access portal for partners who do not have an amelipro

account and on the information provided to patients by the doctors and pharmacists on this file. As a reminder, the CONTACT COVID treatment allows: community doctors/health establishments/health centers to initiate a follow-up of zero patients and their contact cases (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 zero patient sheet and the list of their contact cases; to inform the contact cases of the instructions relating to isolation, tests and other actions to be taken; to ensure follow-up , since September 2020, chains of transmission in schools or in a university; to the ARS to ensure (level 3): their missions of monitoring contact cases; the management of situations requiring specific care. These include, for example, chains of transmission, particularly in companies or nurseries.On the processing carried out by the CNAM in the context of CONTACT COVID As a preliminary point, it is worth highlighting the good cooperation between the CNIL and the CNAM, and its responsiveness. For example, the CNAM removed, at the request of the CNIL, the use deemed problematic to the reCaptcha device. The checks carried out revealed the deployment of an action plan which improved the procedures for implementing the processing and corrected the bad practices which had been noted by the Commission in its previous opinion. CNAM has profoundly modified the conditions of access to the portal and set up several profiles allowing the management of rights within the CONTACT COVID application. The use of these profiles (super-administrators, local administrators and users) is formalized in a slide show, in user manuals and methodological guides for each of the user profiles. information delivered to zero patients and contact cases, the CNAM organized a meeting with hospital federations in order to remind them in particular that the information notices relating to CONTACT COVID should be displayed to the public in health establishments. To go further, updated information posters were to be sent, during the month of December 2020, by the CNAM to the hospital federations. On this point, while recalling that it is not responsible for the CONTACT COVID treatment and therefore not bound by an obligation to inform people, the CNOP and the CNOM have both provided information to doctors and pharmacists through articles published on the website of the councils of the order (referring in particular to the practical guides present on the web ameli.fr). This content was relayed either through the orders' electronic news letters, or through the orders' social networks (Facebook, Twitter and Linkedln). Finally, the CNAM has taken the following measures at the same time: the methodological guides intended for the actors intervening at each level of the system have been updated following the creation of partner accounts for the health establishments and the ARS; the CPAM systematically use secure health messaging to transmit files to the ARS; the CNAM reminded the hospital federations that the spreadsheet files (in Excel format) created by the health establishments for local CPAMs before access to the

CONTACT COVID portal were to be deleted; the lists of contact cases and zero patients identified within national education and higher education establishments are directly transmitted to the CPAMs via a secure platform (without the ARS serve as an intermediary). As such, the control delegations were able to observe within a CPAM the immediate deletion of these files on the platform as well as on the network directory intended to receive the files mentioned above, after their integration into the CONTACT COVID tool; since On July 28, 2020, a system for automatically deleting data older than three months contained in the CONTACT COVID tool is implemented every day. The control delegations were also able to observe the effectiveness of this removal during a control within a CPAM.Secondly, despite these measures, the checks carried out revealed new bad practices.On this point, it should first be emphasized that some of the malfunctions observed are linked to the sudden increase in the spread of covid-19 and the adaptations that had to be made urgently to deal with it. Indeed, between October 10 and on November 9, 2020, CNAM and local CPAM agents created an average of around 120,000 files per day, which required the implementation as soon as possible of new ways of contacting people risks and, in particular, the information of contact cases by sending SMS containing a URL link. Among these bad practices, it was noted that: the conditions for authentication to the CONTACT COVID tool of certain user profiles do not constituted do not kill strong authentication within the meaning of the General Policy for Health Information Systems (PGSSI-S)13. Nevertheless, pending the generalization of strong authentication, technical and organizational measures have been put in place to reinforce the mode of authentication currently implemented for these profiles; in an isolated manner, certain user accounts were accounts generics shared by several users, making traceability within the application more difficult; the CNAM took the initiative of sending an identical SMS to contact cases that could not be contacted during the day of the creation of their file in the CONTACT COVID tool. This SMS contained a shortened URL resulting in the transmission of personal data to a third party (the company BITLY) not authorized to host health data. This one-off practice only lasted from October 23 to November 2, 2020. In view of the above, the President of the Commission decided to send a letter reminding the CNAM of its obligations and mentioning, on the one hand, the bad practices identified and, on the other hand, measures to be taken to remedy them. On the processing carried out by the ARS in the context of CONTACT COVID As a preliminary point, it should be recalled that the ARS are public establishments, morally and autonomously financially, placed under the supervision of the Ministry of Solidarity and Health14. Many disparities have been noted concerning the practices of the ARS within the framework of the level 3 contact tracing activity. Thus, the verifications carried out at one of the ARSs inspected revealed the implementation of numerous measures to optimally

guarantee respect for personal data through an appropriate management tool. ion of the epidemic (tool hosted by a health data host on the initiative of the ARS in question, automatic deletion of data reported for more than three months, etc.). Conversely, the Commission noted several shortcomings with regard to software for monitoring zero patients and contact cases developed specifically by an ARS. The purpose of this tool is the investigation and epidemiological monitoring of confirmed cases of covid-19 and contact cases, with a view to identifying chains and grouped cases of contamination and taking measures to limit the spread of the epidemic. . This processing uses personal data from CONTACT-COVID and data from the telephone interview with the data subject. implemented in particular by the ARS, for the purposes of combating the spread of the covid-19 epidemic, this decree does not regulate them in detail and essentially aims at the implementation of the CONTACT COVID information system, resulting from the adaptation of amelipro. Therefore, if it must be regarded as authorizing the implementation of personal data processing for the purposes of health investigations by the ARS, decree n° 2020-551 of 12 May 2020 as amended does not regulate the processing implemented specifically by the ARS via its software for monitoring zero patients and contact cases. This tool is defined and implemented under the sole responsibility of this ARS and is therefore subject to the provisions of the GDPR, the Data Protection Act and of law n° 2020-546 of May 11, 2020 as amended which authorizes it. As indicated in Article 14 of Decree No. 2020-551 of May 12, 2020, the processing implemented by the ARS is done so on the basis of Article 67 of the Law of January 6, 1978, which exempts from prior authorization for the processing of health data set up by certain organizations to respond to a health emergency situation. With regard to this tool, the delegation noted certain shortcomings: A breach of the obligation to respect a retention period data proportionate to the purpose of the processing: if it appears from the on-site inspection that a policy of data retention periods is being developed by the ARS, it has nevertheless been observed in practice that it retains without duration restriction on the data contained in the software specifically developed since the date of implementation of the level 3 contact tracing activity. The ARS also indicated that it does not carry out an intermediate archiving of the data. The CNIL has also obsessed We have verified that the information collected by the investigator following the telephone call to a zero patient in order to identify his contact cases is entered in a spreadsheet. This file is then sent to the CNAM by secure health messaging so that it can transfer the data to the CONTACT COVID teleservice. The Commission notes that this practice is provided for by MINSANTE circulars No. 99 and No. 155. It considers, however, that it leads to a dispersion of data in messaging systems. The files are then, at least in part, kept on the servers. This practice is not, for lack of sufficient precautions, likely to guarantee the effectiveness of compliance with

reasonable retention periods. The Commission is asking, for example, either to stop transmitting spreadsheets via secure health messaging systems and to feed the data relating to patient zero contact cases into the CONTACT COVID software provided for this purpose, or to proceed with the immediate deletion emails containing the spreadsheets following their sending via secure health messaging, or to regularly archive the emails containing these spreadsheets. A breach of the obligation to ensure data security: the tool developed specifically by the ARS is accessible from a shared folder with restricted access administered and hosted by the latter. No additional authentication is required to access this application. This absence of authentication does not make it possible to finely trace the events in the event of access to this application by an unauthorized third party, nor to determine through which person this third party had access to it. Within this ARS, a breach of the obligation to carry out a DPIA was also noted: in accordance with Article 67 of the amended Data Protection Act, the processing of personal data implemented in the field of health by the ARS and whose sole purpose is to respond to a health alert and manage its consequences, must be the subject of a DPIA.In the light of the findings made, the President of the Commission sent a formal notice to comply with the requirements of the GDPR within one month to this ARS.Finally, the Commission wishes to share certain recommendations with all the ARS concerning bad practices noted during the checks.First of all, with regard to pe information rsonnes, the information that is delivered to people concerning the reuse of data from CONTACT COVID for epidemiological monitoring purposes is either absent, incomplete, or difficult to access. The Commission invites the ARS to ensure that they are vigilant on this point. In particular, the delegation noted in one of the ARSs checked that, during the telephone interview, zero patients or contact cases are not able to be redirected to exhaustive information on the processing of their personal data. , even though an email is systematically sent to them on the health instructions to be followed. Therefore, the Commission recommends initially informing zero patients and contact cases during telephone calls, for example, in the case of a voice server, by an automated oral mention at the start of the conversation incorporating a referral to the website or to a telephone key for delivery of all the prescribed information. Secondly, the Commission recommends providing immediate access following the telephone call to the information provided on the site, for example, by including a hypertext link in the e-mails sent following each telephone call to zero patients. Then, the delegations noted the presence of comment fields within the tools used in the context of the management of the covid-19 epidemic, while such free text entry areas increase the risk of entering inappropriate comments. or irrelevant in relation to the privacy of the persons concerned. The CNIL recommends limiting the use of free comment areas and encouraging the use of drop-down menus offering objective

assessments. recalling its obligations and the measures to be taken to comply. At the same time, letters were simultaneously sent to the Ministry of Solidarity and Health in order to alert it to the aforementioned bad practices. Letters were also sent by the Commission to all the ARS in order to remind them of the measures necessary to protect the data of the persons concerned from the CONTACT COVID tool. 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 inspection took place in June 2020. Following these inspections, 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 law of January 6, 1978 as amended. 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, now called TOUSANTICOVID. 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 bodies involved in its implementation, including in particular the National Institute for Research in Science and Technology (INRIA), which designed the protocol on which the application is based and which acts as project management assistant.These verifications, carried out in October and November 2020, focused in particular on the sustainability of the to the formal notice of July 15, 2020 and on the compliance of the new functionalities of the application with the GDPR and the amended law of January 6, 1978. With regard to compliance measures following the formal noticeIn its formal notice remains as set out in its previous opinion, the Commission had noted several bad practices related to the operation of the STOPCOVID application in its version v1.0. It was noted that it is not p possible to use the application in this version v1.0. Contact history filters at the user's phone level have been enabled. On this point, the ministry complied by forcing the update of the application to version v1.1. It was also found that the reCaptcha technology of Google company implemented in version v1. 0. is no longer used. The cessation of the use of this technology is mentioned in the AIPD. The ministry has also brought itself into compliance by adding its subcontractor INRIA to its privacy policy as the recipient of the data. The delegation noted, during the check, that this mention appeared there. The ministry has brought itself into compliance by supplementing the clauses relating to the GDPR in the subcontracting contract binding it to INRIA. of the GDPR, it is mentioned in the DPIA the collection of the IP address of the mobile equipment of the user of the application within the framework of the security measures of the system based on the solution to prevent attacks by denial of

distributed service (anti-DDoS) from the ORANGE company. Regarding the new version of the application called TOUSANTICOVID On October 22, 2020, the Ministry of Solidarity and Health deployed an update of the STOPCOVID application , called TOUSANTICOVID . The TOUSANTICOVID application offers new features in addition to the main contact tracking feature, such as access to information on the epidemic and easy access to the derogatory travel certificate. first materialized by a link to the website of the Ministry of the Interior, then a new version was deployed on November 3, 2020 allowing the certificate to be generated directly in the application and stored in the user's terminal .It has been noted that none of the data processed within the framework of these new functionalities, as implemented as of the November 2020 checks, is processed on the central server, in a logic of minimization of data and data protection by design and by default. During the checks in November 2020, the Ministry of Solidarity and Health indicated that the development of new These functionalities were under study, including one allowing the user to filter health information according to a postal code of their choice. These new functionalities were the subject of a referral to the Commission, as described in paragraph 33 of this opinion.C. Other checks – reminder booksIn addition to the checks carried out on the main information systems SI-DEP, CONTACT COVID and TOUSANTICOVID, the Commission is also carrying out checks on daily files linked to the monitoring of the pandemic. checks concerning the keeping of reminder books implemented from October 2020, by certain catering establishments and drinking establishments located in the maximum alert zones to comply with the reinforced health protocol. These establishments collected the contact details of their customers in order to communicate them, on request, to the health authorities to help them in their search for contact cases. In particular, the CNIL has published on its website examples of reminder books for professionals15. The investigations carried out following several reports on social networks revealed several breaches of the GDPR, including misuse of purpose (some organizations reserved the possibility of using the data collected for prospecting purposes), the collection of irrelevant data and the absence of information notices on the data collection forms. The organizations concerned having indicated that they had deleted the data collected and had not used them for commercial purposes, the CNIL decided to remind them of the order while inviting them to comply in the future in the event that the keeping of reminder books is again necessary.D. 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 and the deletion of the data they contain. It also reiterates 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 administrators and users of the CONTACT COVID

application (CNAM, ARS, health establishments , etc.). This opinion is therefore only a summary of these exchanges and the findings made during the second phase of inspections. In this respect, a third phase of inspections is already planned and will begin in January 2021. It will mainly focus on the points below. Concerning the SI-DEP processing, in addition to any technical modification made to the processing, the following points will be the subject of particular attention: the effective implementation of the transmissions to the data platform of health; potential changes to the decree governing the processing, taking into account in particular the integration into SI-DEP of the results of antigenic tests and taking into account the evolution of the data collected; compliance with retention periods; the implementation of the action plan defined by the Directorate General for Health.Concerning the CONTACT COVID treatment: access to the CONTACT COVID partner access portal for new users (pharmacists, u universities, CNAM subcontractors, etc.); the delivery of antigenic tests; the effectiveness of the measures provided for the exercise of the rights of the persons concerned, in particular within universities and educational establishments; the use of data from CONTACT COVID by other ARS as part of their level 3 contact follow-up mission. Regarding TOUSANTICOVID processing: potential changes to the decree governing the processing, taking into account in particular the integration into the TOUSANTICOVID application functionalities linked to the derogatory travel certificate; measures aimed at evaluating the effectiveness and usefulness of the application in the context of the fight against the epidemic; where applicable, the compliance of potential new functionalities. COVID VACCINE treatment: checks will be carried out in the coming weeks to ensure the conditions for implementing the treatment. The next public notice from the Commission will report the results of these checks. Finally, a final campaign of checks will be carried out once the processing has been implemented. 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. This last point also concerns the TOUSANTICOVID application. The PresidentMarie-Laure DENISANNEX 1: Description of the SI-DEP, CONTACT COVID and TOUSANTICOVID treatments The SI-DEP treatment is a national information system implemented by the Ministry of Health which allows the centralization of test results at SARS- CoV-2 carried out by public or private laboratories or authorized health professionals. These results are transmitted to SI-DEP either automatically (4,500 laboratories connected) or manually. This centralization then allows data to be transmitted to various recipients, in particular: the regional health agencies (ARS) and the Primary Health Insurance Fund (CPAM), with a view to carrying out investigations relating to contact cases, as part of the CONTACT COVID teleservice. to the Department of

Research, Studies, Evaluation and Statistics (DREES) and to Public Health France under a pseudonymised form, for the purposes of epidemiological surveillance and the dissemination of statistical information. to the 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 of the virus. The CONTACT COVID treatment implemented by the National Health Insurance Fund (CNAM) collects information on contact cases and chains of contamination and aims to detect contact cases at three different levels. patient 0 and his contact cases (level 1); to authorized health insurance personnel (or to 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 have been diagnosed or tested positive for covid-19. While in use, the smartphone stores a list of temporary nicknames of devices it has encountered for 14 days (this is called proximity history). When a user is diagnosed or tests positive for covid- 19, he can choose to declare himself in the application and, thus, send his contacts' 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.ANNEX 2: List of Parliamentary hearings and opinions issued by the Commission List of Commission hearings: 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's law commission; May 1, 2020: hearing before the rapporteur of the Senate Social Affairs Committee on the draft law extending the state of emergency; May 5, 2020: hearing

before the National Assembly's law commission on the draft law extending the state of emergency; 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; List of opinions given on the four treatments SIDEP, CONTACT COVID, V ACCIN COVID and STOPCOVID/TOUSANTICOVID: Deliberation No. 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 necessary organizational and operating measures for the health system to deal with the COVID-19 epidemic in the context of the state of health emergency; CNIL deliberation no. ° 2020-051 of May 8, 2020 issuing 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 issuing an opinion on a draft decree relating to the mobile application called StopCovid;Deliberation n° 2020-083 of July 23, 2020 issuing an opinion on a draft decree issued pursuant to article 3 of law n° 2020-856 of July 9, 2020 organizing the end of 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 information 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 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; Deliberation No. 2020-126 of December 10, 2020 providing an opinion on a draft decree authorizing the creation of personal data processing relating to the management and monitoring of vaccinations against the SARS-CoV-2 coronavirus;ANNEX 3: List of texts and their main contributions to data protection Personal Law No. 2020 -546 of 11 May 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 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 in the framework of the SI-DEP and CONTACT COVID information systems for the purposes of epidemiological surveillance and research on the covid-19 virus; Law n° 2020-1379 of November 14, 2020 authorizing the extension of the state of emergency and carrying various health crisis management measures and amending Law No. 2020-546 of May 11, 2020: authorizes the extension of the duration of implementation of the CONTACT COVID and SI-DEP information systems until the 1st April 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 account the evolution of the procedures for carrying out screening examinations by authorized health professionals (list fixed by decree); Decree No. 2020-551 of 12 May 2020 as amended relating to the information systems mentioned in Article 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 COVID processing; 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 exit from the state of health emergency and amending decree no. 2020-551 of 12 m ai 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: extended to six months after the end of the state health emergency the retention period of pseudonymised data collected within the framework of these information systems 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 its provisions: extension of the SI covid-19 until no later than April 1, 2021; 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 data relating to vaccinations against covid-19: creates the SI VACCIN information system aimed at enabling the conduct and monitoring of the vaccination campaign against the SARS-CoV-2 coronavirus. 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 within the framework of the state of health emergency). in the face of the covid-19 epidemic in 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 in the face of the covid-19 epidemic in territories that have emerged from the state of health emergency and in those where it has been extended: Data may only be processed for projects pursuing a purpose of public interest in connection with the current covi epidemic d-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 Order of 26 October 2020 amending the decree of July 10, 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 emergencyANNEX 4: List of organizations controlled since May 2020 SI-DEP treatment: The Ministry of Solidarity and Health; The Paris Hospitals Public Assistance (AP-HP); Private medical biology laboratories; COVID CONTACT treatment: The National Insurance Fund Sickness (CNAM); A health establishment receiving patients for consultation; Primary Sickness Insurance Funds (CPAM); Regional health agencies (ARS); The National Council of the Order of Physicians (CNOM); The Council national order of phar maciens (CNOP).STOPCOVID / TOUSANTICOVID treatment:The Ministry of Solidarity and Health;The National Institute for Research in Digital Sciences and Technologies (INRIA);_____See the description of the devices in appendix 1See appendix 2Deliberation no. 2020-087 of September 10, 2020 issuing a public notice on the conditions for implementing the information systems developed for the purpose of combating the spread of the covid-19 epidemic (May to August 2020) As a reminder, the data retention period collected by these information systems was initially set by law at three months after their collection. A specific retention period for data processed for research purposes on the virus was then added to the law in order to allow their retention up to six months after the end of the state of health emergency, i.e. until 11 January 2021 initially.Deliberation n° 2020-108 of November 5, 2020 providing 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 the Law No. 2020-546 of May 11, 2020 extending the state of health emergency Until the date mentioned in Article 11 of Law No. 2020-546 of May 11, 2020, i.e. until April 1 at the latest 2021 As a reminder, the Commission ruled on April 20, 2020 on the

centralization of certain health data from the CONTACT COVID and SI-DEP files within the Health Data Hub (PDS or Health Data Hub) and at the National Fund health insurance (CNAM). As a reminder, the CNIL has ruled on several occasions on the STOP COVID application in its notices dated April 24 and May 25, 2020. On the one hand, the administration has already implemented them within the framework of the TOUSANTICOVID application and certain administration websites offer, moreover, similar functionalities (in particular to allow the generation of supporting documents), without being provided for by regulatory texts. On the other hand, personal data being stored and processed only locally on the user's terminal, at his discretion and on his behalf, it does not appear that the public authorities are responsible for this processing, the only update provision of software to the public that does not constitute the implementation of personal data processing.As of January 14, 2021, more than twelve million people have downloaded and activated the application, more than fifty thousand people have been notified by the application following exposure to covid-19 and more than ninety-two thousand users have declared themselves as cases of covid-19 in the application. The application now sends an alert to users who have been recently in contact with a person who voluntarily declared having tested positive for the coronavirus for 5 minutes within 1 meter or for 15 minutes between 1 and 2 meters, against a duration of 15 minutes within one meter before.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)The PGSSI-S is a documentary corpus that complies with the legal framework for digital health and the information system security policy of the Ministry of Social Affairs. In accordance with Article L. 1110-4-1 of the Public Health Code, the safety standards drawn up by the ANS can be made enforceable by order of the Minister of Health.Articles L. 1432-1 and following of the code of public health

https://www.cnil.fr/fr/cahier-de-rappel-exemples-de-formulaire-de-recueil-de-donnees-et-mentions-dinformation-rgpd