

Deliberation 2021-135 of November 18, 2021 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

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n° 2021-135 of November 18, 2021 providing an opinion on a draft decree in Council of State amending articles R. 131-3, R.

131-4 and R. 131-10-2 of the education code (request for opinion no. 21018705)

The National Commission for Computing and Liberties,

Referral for an opinion on a draft decree in Council of State amending Articles R. 131-3, R. 131-4 and R. 131-10-2 of the

Education Code in application of Article L. 131 - 6 of the Education Code and a of 4° of I of Article 8 of Law No. 78-17 of 6

January 1978 as amended relating to data processing, files and freedoms;

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);

Having regard to the Education Code, in particular its article L. 131-6;

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

Mrs Sylvie ROBERT, commissioner, and after having heard the observations of Mr Benjamin TOUZANNE, commissioner of

the Government recalled the following elements of context: With the aim of strengthening the effectiveness of the control of the

obligation of instruction by the mayors, the Ministry of National Education, Youth and Sports wishes to add new data, d on the

one hand, to the school list that the mayors must establish (articles R. 131-3 and following of the education code) and, on the

other hand, to the automated processing relating to the census of children subject to compulsory schooling and by improving

attendance monitoring (R. 131-10-1 et seq. of the same code) that they have the possibility of implementing. obligation of

instruction by determining the situation of c Each child between three and sixteen years old present on the territory of the

municipality (home education, enrollment in a school, etc.). It is established at each new school year and updated every month

from the lists transmitted by the schools and the public and private establishments and the declarations of instruction in the

family that the mayor collects. The modifications envisaged by the project submitted to the Commission aim to make the data

processed by the mayors in this context consistent with those necessary for the allocation of the national student identifier

(INE) by the ministry. Indeed, the ministry wishes to rely on the existing systems to extend the allocation of the INE to first and

second degree students outside contracts and to children educated at home, who appear on the school list established by the

mayor. More precisely, the draft decree aims to add to the processing implemented by the mayors, in particular, the home address as well as the level of class attended or the title of the training followed by the child, for the school year current and for the previous one. The methods of collection and declaration to the academic director of the national education services of the data on this list will be fixed by an order of which the Commission is not seized. The Commission recalls that if other processing of personal data were affected by the processing of the new data collected from the mayors, the Ministry should update the acts governing the processing operations which supply or are recipients of the data and ensure their compliance with the regulations in force before the implementation implementing modified treatments. The ONDE and SIECLE information systems, which respectively concern pupils educated in primary and secondary education establishments, would be mainly concerned. paragraph of Article L.131-6 of the Education Code must be the subject of a decree issued by the Council of State, after consulting the CNIL, including when these draft decrees intervene to modify these methods . This consultation therefore appears to be mandatory for changes to the processing of personal data provided for in Articles R. 131-10-3 et seq. of the Education Code. The Commission also recalls that in accordance with a) of 4° of I of article 8 of law n°78-17 of January 6, 1978 as amended, it must be consulted on any bill or decree or any provision of a bill or decree relating to the protection of personal data or the processing of such data. Such a consultation appears necessary for the modifications to the processing of personal data provided for by Article R. 131-3 of the Education Code. Issues the following opinion on the draft decree: On the general economy of processing :The draft decree submitted to the Commission concerns two processing operations of personal data. The first concerns the listing by the mayor of children subject to compulsory education (articles L. 131-6 and Education Code) and is a legal obligation within the meaning of c) of 1. of Article 6 of Regulation (EU) 2016/679 (GDPR). The second offers the possibility for the mayor to implement automated processing in order to carry out a census of children subject to compulsory education residing in the municipality and to collect information concerning the registration and school attendance of these children in order to allow him to take measures of a social or educational nature within the framework of the powers conferred on him (article R. 131-10-1 and following of the same code). The Commission considers that this processing is not mandatory but constitutes an option for the mayor and therefore falls within the performance of a task in the public interest within the meaning of e) of 1. of Article 6 of the GDPR. Finally, the Commission notes that Article R. 131-10-6 on the rights of data subjects refers to obsolete provisions since the entry into force of the GDPR and the amendments to the law of January 6, 1978 as a result. The Commission considers that these provisions need to be updated. On the data collected:

The draft decree adds to the data processed by the mayors the methods of instruction and, where applicable, the level of class attended or the title of the training followed in the establishment, for the current school year and for the previous one as well as the relationship of the persons responsible for the child with this one. With regard to the missions of control of the obligation , school attendance and attendance by mayors, the collection of data on the training followed during the school year and the previous one appears proportionate, relevant and limited to what is necessary. the ministry indicated that it is up to the mayor to ensure, when registering on the school list, that the people who do so are in charge of the child and that knowing their quality allows him to adapt to his interlocutors tors according to their situation and that of the child. The Commission takes note of the Ministry's commitment to replace the data relating to the relationship of the persons responsible for the child with the child, by collecting data relating to the child in order to cover all the possibilities links between the persons responsible for the child and the child (parents, guardian, or person who continuously exercises de facto authority). Therefore, the collection of this data appears justified. On the exercise of the rights of the persons concerned: The Commission notes that the right of opposition is excluded by Article R. 131-10-6 of the Education Code. As part of the necessary updating of this article with regard to the new regulations, it requests that this article also mention the right to restriction in accordance with Article 18 of the GDPR. The Commission observes that many people are affected by the device. Consequently, it draws the attention of the various actors who feed the processing in connection with the obligation of education and the monitoring of attendance (in particular the organizations responsible for the payment of family benefits and the directors of schools or the heads of schools, public or private) on the need to inform the people from whom data are collected of the possibility or the obligation, if necessary, to communicate these to the mayor for the control of the obligation of instruction and school attendance. Information for all data subjects must be provided in accordance with Articles 12, 13 and 14 of the GDPR, in a concise, transparent, understandable and easily accessible manner, in clear and simple terms. Finally, the Commission recalls that the mayors, in their capacity as data controller, must in particular specify the concrete procedures for exercising the rights of the data subjects. conditions of implementation: The Commission emphasizes that the mayor is the sole responsible for the processing mentioned. Therefore, it is up to him to define precisely the conditions for the implementation of this processing and to ensure that they are implemented. works in accordance with data protection regulations, in particular with regard to the exercise of the rights of individuals, the information provided to these individuals and the measures s to put in place. On the need to carry out a data protection impact assessment (DPIA) The reflection on the need to carry out a DPIA is the

responsibility of the data controller, and therefore of the mayor. The Commission considers that the criteria defined by the guidelines on the DPIA and the way of determining whether the processing is likely to give rise to a high risk which could make it compulsory to carry out a DPIA could be met, in particular as regards, in certain cases, of large-scale processing in view of the proportion represented by the persons concerned (children and adults responsible for them) out of the entire population of a municipality and the vulnerability of children due to their age. Prior consultation with the CNIL could also be mandatory depending on the result of the risk assessment carried out by the data controller, in accordance with Article 36 of the GDPR.

On processing security measures: The Commission recalls that 'it is up to the data controller to guarantee the security of personal data by meeting the requirements provided for in articles 5.1-f and 32 of the GDPR, and that the respect of these obligations requires a regular reassessment of the risks for the persons concerned as well as a regular update of the security measures for each of the processing of personal data affected by the planned system. The President Marie-Laure DENIS