

Deliberation 2021-143 of December 2, 2021 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Friday December 10, 2021 NOR: CNIX2136704V Deliberation n° 2021-143 of December 2, 2021 providing an opinion on a draft decree amending decree no. 2020-650 of May 29, 2020 relating to the processing of data called "TousAntiCovid" (request for opinion no. 21020211) The National Commission for Computing and Liberties, Seized by the Minister for Solidarity and health of a request for an opinion relating to the draft decree amending decree no. 2020-650 of May 29, 2020 relating to the processing of data called TousAntiCovid; 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); Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms; Having regard to Law No. 2021-1465 of November 10, 2021 laying down various provisions for health vigilance; Having regard to the decree modifying decree n° 2020-650 of May 29, 2020 relating to the processing of data called TousAntiCovid; After having heard the report of Mrs Valérie PEUGEOT, Commissioner, and the observations of Mr Benjamin TOUZANNE, Government Commissioner, following opinion: The National Commission for Computing and Liberties (hereinafter the Commission) was seized urgently, on November 16, 2021, by the Minister for Solidarity and Health, then on November 24, 2021 by corrective referral, a request for an opinion on a draft decree amending decree no. 2020-650 of May 29, 2020 relating to data processing called TousAntiCovid. As a reminder, this processing is in the form of a mobile application comprising several functionalities which are based, where applicable, on data processing pursuing distinct purposes and whose implementation methods are specific to each of them. In particular, it allows people to be informed when they present a risk of having been contaminated with COVID-19, either due to contact with an infected person who has declared themselves as such in the application, or due to frequenting places during the same time slot as one or more people subsequently diagnosed with COVID-19. It also allows, from information provided or integrated by the user, the generation and storage of certain supporting documents or official certificates, in particular the health pass set up for the management of the health crisis. The referral is registered, as part of the evolving COVID-19 strategy. First of all, the adoption of law n° 2021-1465 of November 10, 2021, containing various health vigilance provisions, has the effect of extending the use of the health pass until July 31, 2022. Then, the government recently announced changes, on the one hand, with regard to the vaccination campaign which provides for the need, for certain categories of people, to carry out a booster shot in order to benefit from a complete

vaccination schedule and, on the other hand, a modification of the duration of validity of the tests allowing to benefit from the health pass, which goes from 72 hours to 24 hours. display to users targeted health recommendations and, where applicable, measures to take in order to benefit from a valid health pass. These recommendations and measures should make it possible to improve education on what to do, some of which will have a direct impact on the validity of the certificates (for example, by informing adults of the need for a third dose in order to benefit from a complete vaccination schedule), with the aim of limiting the spread of the virus. In this respect, the Commission notes that the data will only be processed locally in the user's terminal. Furthermore, it recalls that data subjects must be informed of these new functionalities and be able to exercise their right to object to the processing of their data for these new purposes. On the display of targeted health recommendations and measures to be taken in order to benefit a valid health pass The project provides for the addition of a 9° to II of article 1 of the decree in order to create a new purpose for the processing implemented as part of the TousAntiCovid application. This has three objectives: the storage of the certificates making up the health pass, the information of users as to the validity of their supporting documents and the display of targeted health recommendations and, if necessary, of the measures to be taken in order to benefit from a valid health pass. In this respect, 14° of II of article 2, as modified by the draft decree, indicates that all the data contained in the health pass and the status of the certificates will be subject to a processing of data. The Commission points out that this is an important modification, which changes the scope of the processing. Indeed, until now the ministry was content to make available to people, via the notebook functionality, a digital tool allowing local storage and easy presentation of the health pass without the data appearing in the QR codes being subject to processing in the TousAntiCovid application under its responsibility. The processing of this data, which in particular constitutes sensitive data, takes place on behalf of the Ministry: it involves reading, locally on the user's terminal, the certificate data, for purposes determined by the Ministry, namely, the display of personalized health notifications. The Commission considers that this purpose, which meets an important reason of public interest, is legitimate. The processing methods call for the following observations. a valid health pass Firstly, the Commission notes that the display of targeted recommendations and the measures to be taken in order to benefit from a valid health pass involves the processing of personal data (surname, first names). It takes note of the Ministry's clarifications that such processing should only make it possible to detect and specify which certificates are concerned by the targeted recommendation and whether the user has integrated several vaccination certificates (family, relatives, etc.) within the application. The Commission considers that the personal data processed in the context of the display of the targeted

recommendations and the measures mentioned above do not call for any additional observations. Secondly, the Commission notes that the 14 ° of I of article 2, as modified by the draft decree, specifies that all the data appearing on the certificates of the health pass are not subject to any processing on the central servers of the application (the servers called ROBERT and Cléa). The Ministry confirmed that the data processing considered in the context of the display of targeted recommendations and measures to be taken in order to benefit from a valid health pass would therefore be carried out locally, on the user's terminal, and that 'no cross-checking of data is envisaged with other data processing, in particular those implemented within the framework of the other functionalities of the application. It considers that this operation provides substantial guarantees to the device, such as to ensure proportionality. Regarding the information of persons and the exercise of the right of opposition Paragraph 2 of article 4, as amended by the draft decree, provides for specific information for users of the application concerning the terms of the processing implemented for the purpose of displaying targeted recommendations and measures to be taken in order to benefit from a valid health pass, in accordance with Article 13 of Regulation g general on data protection (GDPR). The Commission insists on the need for the Ministry to inform individuals of the possibility of opposing the processing of their data for these purposes and to ensure the effectiveness of this right, in accordance with Article 21 of the GDPR. .On the other amendments made to Decree No. 2020-650 of May 29, 2020 Regarding the extension of the duration of the processing The first paragraph of Article 3 as amended by the draft decree now provides that the processing, initially implemented until December 31, 2021, will be extended until July 31, 2022. The Commission notes that the duration of implementation is consistent with that provided, on the one hand, for Contact Covid and SI-DEP processing and, on the other hand, for the obligation to present the health pass for certain trips and activities in accordance with Law No. 2021-1465 of November 10, 2021 laying down various provisions for health vigilance, the application only being useful in connection with the gl health strategy obale. However, it reiterates its warnings so that special vigilance is given to the temptation of technological solutionism. In this respect, the Commission recalls that the proliferation of digital systems implemented in the context of the management of the epidemic makes it absolutely necessary to assess their effectiveness in a quantified and objective manner in the fight against COVID-19, which which it has reiterated on numerous occasions since the start of the epidemic, in order to ensure that the use of these devices will end as soon as this need has disappeared. The Commission regrets that to date, the studies and assessments requested repeatedly have not been sent to it. With regard to the care of people identified as contact cases in the TousAntiCovid application As a preliminary point, the Commission recalls that the TousAntiCovid application was

initially designed to inform its users in the event of exposure to COVID-19: The contact tracing functionality via Bluetooth technology aims to inform users that they have been in the vicinity of people with the same application and diagnosed positive for COVID-19, this proximity inducing a risk of contamination; The digital system for recording visits to certain establishments open to the public, via the provision by the managers of these places of QR codes that people are invited to scan, makes it easier to alert people who have visited them at the same time as one or more people who are subsequently screened or diagnosed positive for COVID-19. These data processing operations are both based, on the one hand, on the collection of personal data locally on the user's terminal (in particular a list of temporary pseudonyms in the first case and the list of scanned QR codes of the places visited in the second) and, on the other hand, on the sending of this data to separate central servers (the ROBERT and Cléa servers) when a user declares himself positive in the application. The project plans to modify the 6° of II of article 1 of the decree in order to specify that persons identified as contacts at risk of contamination via the two functionalities of the application mentioned above will benefit from any right, benefit or service open [...] to persons identified as contact cases mentioned in IV of Article 11 of Law No. 2020-546 of May 11, 2020. ensure equal treatment between all people identified as a contact at risk of contamination, regardless of the method of identification – by health investigators or via the mobile application – particularly in the context of the coverage of screening tests without a medical prescription, as provided for in article 24 of the amended decree of June 1, 2021 prescribing the general measures necessary for managing the end of the health crisis. These modifications do not call for any particular comments. the generation of the supporting documents required by the public authoritiesAs a preliminary point, the Commission recalls that the TousAntiCovid application allows people using the application to store, locally on the user's terminal, personal data in order to generate supporting documents required by the public authorities. To do this, data such as surname, first names and address are recorded by the user on the terminal, so as not to have to be entered each time a new receipt is generated. Until now, only the derogatory travel certificate had been included during periods of confinement and those during which a curfew had been introduced. 13° of I of article 2 of the decree, as amended by the project, provides for the storage of the data entered by the user, in order to generate a QR code allowing him to have all the supporting documents required by the public authorities, beyond the only derogatory travel certificate initially referred to (for example, the sworn statement attesting to the absence of symptoms of COVID-19 infection). The Commission takes note of the Ministry's clarifications that, in the same way as the derogatory travel certificate, the processing of the relevant data will be carried out only locally, on the user's terminal. These

modifications do not call for comments. With regard to informing people about the validity of the certificates making up the health pass 9° of II of Article 1 of the decree, as created by the draft, provides in particular for informing people about the validity of certificates. 14° of II of article 2 specifies, in this regard, that the status (valid or revoked) associated with QR codes will be processed. implemented for the purposes of combating fraud, on which the Commission ruled in the context of deliberation no. central servers of the TousAntiCovid application The first paragraph of II of article 2 of the decree is modified in order to recall that the data allowing the identification of the persons concerned and their terminal, cannot be collected or recorded within the framework of one of the central processing servers. Discussions with the Ministry show that these provisions refer to the application's central servers, called ROBERT and Cléa and referred to in the third paragraph of I of Article 1 of the decree. The Commission takes note of the Ministry's clarifications that the performance of statistical analyses, for which 4° of II of amended article 1 now provides for the processing of pseudonymised data instead of anonymous data, does not call into question the provisions mentioned above. Indeed, the processing of data implemented for said analyzes does not imply the feedback of information on one of these servers. The President Marie-Laure DENIS