

Deliberation 2021-077 of July 1, 2021 National Commission for Computing and Liberties Nature of the deliberation: Opinion

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providing an opinion on a draft decree amending the 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. 21010901) The National Commission for Computing and Liberties,

Seized 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 the regulations (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 regulations); Having regard to law n° 2021-689 of May 31, 2021 relating to the management of the end of the health crisis, in particular its article 7; Having regard to law n ° 78-17 of January 6 1978 amended relating to data processing, files and freedoms; After having heard the report of Mrs Valérie PEUGEOT, commissioner, and the observations of Mr Benjamin TOUZANNE, government commissioner, Issues the following opinion: The Commission has been seized of a draft decree amending the decrees ets relating to the Contact Covid, SI-DEP and Vaccin Covid information systems (IS). The changes envisaged aim to: adapt the Contact Covid processing to take into account the effects of vaccination; extend the categories of recipients of the data contained in Contact Covid processing for research and evaluation purposes; specify the essential characteristics of the processing of personal data implemented by the regional health agencies (ARS) for the purpose of carrying out health surveys; improve the rate of vaccination coverage. As a preliminary point, the Commission recalls that the creation of data processing operations placed under the responsibility of different actors, which meet distinct purposes, relate to different categories of data and which do not provide for the same categories of recipients, constitutes one of the essential measures put forward by the public authorities to guarantee respect for the privacy of individuals data and the protection of data concerning them, while constituting means of combating Covid-19. On the information of data subjects and the procedures for exercising rightsIn view of the sensitivity of the data collected in these information systems, due to the context

justifying their implementation as well as their scale, the Commission considers it necessary to improve information already available so that, in accordance with Article 12 of the GDPR, the Ministry disseminates concise, transparent, understandable and easily accessible information, in clear and simple terms, so that the entire population can be aware of the existence of the different treatments and understand their scope as well as their interconnections. To this end, the Commission invites the Ministry in particular to supplement the information already disseminated with diagrams and maps detailing the links between each of these processing operations. Indeed, the multiplication of data processing operations and their interconnections contributes to the creation of a complex ecosystem, requiring data subjects to have the necessary information and the means to assert their rights.

work in the fight against the epidemic. The Commission recalls the need for the information made public by the Ministry to clearly show the contact details from which individuals can obtain information and exercise their rights. On this point, the Commission also invites the Ministry to simplify the exercise of the rights of individuals, for example by allowing individuals to object once to all reuses of data collected in the context of this processing. .Finally, the Commission notes that the draft decree does not provide any details with regard to the information of persons concerning the development of the various information systems. Like what was provided for in the other draft decrees modifying the processing relating to the fight against the Covid-19 epidemic, such as decree no. 2020-1018 of August 7, 2020, the Commission invites the Ministry to complete the draft decree in order to detail the way in which the persons whose data were collected before its date of entry into force will be informed by the data controllers of the modifications thereof. The Commission takes note that the CNAM undertakes to update and improve the various information media for people and to facilitate the exercise of their rights in a global manner, in particular through healthcare personnel.

On the modifications made to the Covid Vaccine information system (Covid Vaccine IS) Article 2 of the draft decree aims to modify the provisions relating to the Covid Vaccine IS in order to improve vaccination coverage by facilitating access to vaccination for the most vulnerable people. risk, by: the sending by the medical service of the National Health Insurance Fund (CNAM) to the attending physician of the list of their vulnerable unvaccinated patients; the support for vaccination, by the medical service of the CNAM, unvaccinated people with pathologies at risk of a severe form of Covid-19. In order to allow the implementation of these actions, which aim, according to the details of the ministry, to raise the awareness of the persons concerned and to provide them with assistance in scheduling appointments, article 2 of the draft decree adds the purpose support for people with particular vulnerabilities to vaccination with the Covid Vaccine IS. While the Government argues that the combined mobilization of attending physicians and CNAM

services aims to prevent people from being the subject of any awareness-raising action in cases where it would be relevant, the Commission stresses that this may nevertheless lead, in some cases, to these actions being redundant and to repeated solicitations of the same people. It notes that, as vaccination is not compulsory, the purpose of these solicitations will be to inform and raise people's awareness and not to try to convince them when they indicate that they do not wish to be vaccinated. In order to avoid any risk of repeated solicitations, the Commission invites the Ministry to provide that the action of the Health Insurance will be exercised as a priority for persons who have not designated an attending physician. On the establishment of lists of unvaccinated patients On the creation and distribution of patient lists According to the details of the Ministry: the list of patients who have declared a treating doctor and who are not vaccinated will be established by the automatic reconciliation of the database of people who have declared a treating doctor (treating physician database) and the Covid Vaccine IS. It may in particular include people who have been recipients of vaccination vouchers, who have expressed their right of opposition to SI Vaccin Covid and who have not been vaccinated; the CNAM medical service will then receive the various sets of data before to communicate them to the attending physicians via the Ameli pro secure messaging service then, from July 2021, via the Ameli pro secure space, accessible by using the attending physician's health professional card (CPS) only; the sending by the CNAM medical service to the attending physician of the list of unvaccinated patients will allow the healthcare professional to carry out targeted information and awareness actions for his patients whom he identifies as fragile; the physician contractor may thus have communication, within the framework of the Covid Vaccine IS, of information relating to its patients, vaccinated or not; the list of patients may be updated after requesting the medical service by the attending physician. With this in mind, article 2 of the draft decree provides for extending the categories of data that can be collected within the framework of the Covid Vaccine IS to the identification data of the person eligible for vaccination, whether vaccinated or not. While the Commission understands the objective of raising awareness among people at risk of a severe form of Covid-19, it would however like to point out that it is not in principle in favor of the creation and dissemination of lists of unvaccinated people, both in terms of the volume and sensitivity of the data necessary for its establishment, and in terms of their intrusive nature and the fears of misuse that these lists are likely to generate, particularly among people who do not wish not be vaccinated. In addition, the Commission regrets having to rule on the proportionality of such a measure without having prior investigation elements allowing it to assess the proportion of doctors treated ants who have not already systematically contacted their patients at risk of a severe form of Covid-19, as well as the part of attending physicians wishing to receive the lists envisaged. the central role

that vaccination plays and the fact that it remains optional, awareness-raising actions on vaccination mobilizing new means can legitimately be implemented, provided that they are surrounded by strong guarantees. The Commission considers that the protection of medical secrecy governed by Article L. 1110-4 of the Public Health Code does not preclude this since this information would only be communicated to the doctors treating the patients, and will be processed by the CNAM which may, as part of its mission of informing and raising the awareness of the insured persons and subject to compliance with the applicable provisions, access and process information covered by medical secrecy. On the other hand, the commission formulates a certain number of requests and reservations in this opinion, in particular in order to avoid the risk of excessive solicitation. It recalls that the lists must only be kept in a form allowing the identification of the persons concerned for a period not exceeding that necessary with regard to the purposes for which they are processed, in accordance with Article 5.1.e of the GDPR. The Committee also recommends that the lists be drawn up and sent to attending physicians only at their request, addressed to the competent health insurance department. The Commission therefore invites the Ministry to modify the draft decree accordingly. The people involved in the support should therefore be made aware of the need to avoid multiple requests, all the more so in the case of people who would have opposed the processing of data concerning them in SI Vaccin Covid. On the reuse of the attending physicians database for compiling these lists According to the Ministry's instructions, the attending physicians database is created by Article L. 162-5-3 of the Social Security Code (CSS) as well as by the decree n° 2015-390 of April 3, 2015 authorizing the processing of personal data by the bodies managing the basic compulsory health insurance schemes for the performance of their missions of affiliation, registration, instruction of rights to benefits and coverage of care, products and services. According to Decree No. 2015-390 of April 3, 2015, the base attending physicians, like the other treatments implemented by the bodies managing compulsory basic schemes health insurance, allows in particular: the registration, affiliation, instruction, management and control of the rights of beneficiaries; the acquisition, control, processing and recording of information s useful; individualized management of the relationship with beneficiaries; monitoring and processing of amicable procedures, non-contentious appeals, litigation actions and actions to prevent and fight against fault, abuse and fraud; transfer of information in the event of a change management body; the production of statistics. The Commission notes that the use of these treatments, of which the referring doctors database is part, in order to identify patients and carry out targeted information and awareness actions via doctors contractors is not included. It therefore questions the compatibility of this objective with the purposes provided for in Article 1 of Decree No. 2015-390 of April 3, 2015 and invites the

Ministry to modify Decree No. 2015-390 if necessary. access to certain databases containing medical information In order to obtain the list of people most at risk of a severe form of Covid-19 who need to be accompanied, the medical service will access the Covid Vaccine IS in order to cross-reference the data of people who have not been vaccinated but having received vaccination vouchers as part of the first vaccination campaign, with other databases containing medical data: the Hippocrates database, enabling the identification of policyholders with long-term illnesses; a database relating to the payment of derogatory daily allowances for vulnerable people; a basis relating to disability. As the Ministry did not specify the basis and the legal regime applicable to this treatment, the Commission recalls that the objective pursued must be compatible with the purposes of the files consulted and calls, if necessary, to make the necessary modifications to the texts governing these files. On the role of the CNAM medical service The CNAM medical service would be, on the one hand, in charge of compiling lists for treating doctors, article 3 of decree no. data from the attending physicians database, on the basis of their duties and within the limits of the need to know. On the other hand, some of these agents, attached to the CNAM medical service, would also participate in supporting the vaccination of people most at risk of a serious form of Covid-19. Commission invites the Ministry to pay particular attention to the relationship between the texts governing the missions entrusted to this service, in particular Article L. 315-1 of the Social Security Code, and those which would be devolved to it within the framework of this project. On the interconnections between Contact Covid, SI-DEP and SI Vaccin Covid vaccinated persons identified as contact cases or co-exposed persons in application of the provisions of article 1 of the decree of May 12, 2020 creating SI-DEP and Contact Covid. The Commission understands that this purpose aims to allow data from SI Vaccin Covid to be uploaded into Contact Covid, so that the appropriate health measures are implemented, in particular by avoiding the placement in quarantine of vaccinated persons, and considers that this purpose is relevant. The Commission would however like to point out that each of these information systems, which is part of the fight against the Covid-19 epidemic, pursues its own purposes, defined in article 11 of the law of May 11, 2020 and in Articles 1 and 9 of the decree of May 12, 2020 for Contact Covid and SI-DEP processing, and defined in Article 1 of the decree of December 25, 2020 for the Covid Vaccine IS. On the collection of data from SI-DEP in the Covid Vaccine IS The draft article 2 of the decree of December 25, 2020 provides for the entry into the Covid Vaccine IS of the date of an infection by the SARS-CoV- virus. 2 less than six months old, from SI-DEP. However, the Commission recalls that, with the exception of storage for research and epidemiological monitoring purposes, the storage period for SI-DEP data provided for in Article 11 of Law No. 2020-546 of 11 May 2020 is three months from their collection. It

therefore invites the Ministry to modify the draft decree on this point. On the collection of data from the Covid Vaccine SI in Contact Covid and SI-DEPS Regarding Contact Covid The Commission notes that draft Article 2. 1.5 ° of the decree of May 12, 2020 provides that Contact Covid will be supplied with data from the Covid Vaccine IS. The Ministry specified that this transmission of information would relate only to the vaccination status, the name of the vaccine and the date or dates of injection referred to in draft Article 2. 1.6) in order to ensure the protection of persons presenting a risk of contamination (contact cases and co-exposed persons) and to adapt the orientation of persons likely to be exposed to them according to their vaccination schedule. The Commission considers that these data fall within the categories referred to in Article 11. 1 of the law of May 11, 2020, which can be processed and shared, if necessary, without the consent of the person. It also considers that their collection is relevant for the conduct of a health investigation, since the assessment of a risk of contamination or the reconstruction of a chain of transmission of the virus varies according to whether or not people are vaccinated. On the other hand, the Commission invites the Ministry to indicate precisely in the decree the categories of data from the SI Vaccin Covid which will be collected within Contact Covid, as well as the persons concerned. With regard to SI-DEPLE draft article 9.2° provides for the collection of the following data: vaccination status, name of the vaccine and the date(s) of injection . The Commission notes that the Ministry has specified that these data come from the Covid Vaccine IS. It therefore invites the Ministry to expressly mention it in the draft. The Commission also notes that the Ministry intends to justify this collection by carrying out research on the effects of vaccination and, in particular, on the risks of contamination before or after vaccination. finalization of the vaccination schedule. The Commission draws the Ministry's attention to the need to collect only adequate, relevant and limited data to what is necessary in relation to the purposes for which they are processed. To this end, it recalls that the use of data from the SI-DEP, Contact Covid and Vaccin Covid information systems for research purposes is already provided for by the texts, in particular by their payment to the CNAM and to the Health Data Platform (PDS), with a view to making them available to researchers. Therefore, in order to guarantee respect for the privacy of individuals and the protection of data concerning them, it invites the Ministry not to duplicate structured data, by making SI-DEP a new search base, in addition to the CNAM and PDS warehouses. On the entry of data from the Covid Vaccine IS into the National Health Data System (SNDS) The Commission considers that, pursuant to Article 7 of the law of 31 May 2021 on the the management of the end of the health crisis, the addition of data, from the Covid Vaccine IS, to Contact Covid and SI-DEP will result in their being integrated into the SNDS. While observing that certain categories of data from this system information could fall under

the categories of data mentioned in Article L. 1461-1 of the CSP, the Commission is wondering about the possibility of providing by regulation for the transfer of data from the Covid Vaccine IS into the SNDS, even though the transfer data from IS Contact Covid and SI-DEP was provided for by law and under the conditions specified by decree no. 2021-848 of 29 June 2021 relating to the SNDS. The Commission requests that the decree relating to the Covid Vaccine SI be amended in order to expressly mention of the integration of some of its data into the SNDS. It also emphasizes that the Contact Covid, SI-DEP and SI Vaccin Covid data controllers will respectively be required to inform individually and without delay all the persons concerned by this development as well as the procedures according to which they will be able to exercise their rights. the changes made to Contact Covid and SI-DEP On the addition in Contact Covid of new categories of data recipients for the purposes of research, study or evaluation in the field of health On the one hand, the project of Article 1 IV provides for authorizing health insurance organizations and the National Military Social Security Fund to use subcontractors for the purposes of epidemiological surveillance, research on the virus and on the means of combating its spread. The Commission takes note of the Ministry's clarifications that: this amendment will allow certain bodies managing a compulsory health insurance scheme ie, and more particularly the agricultural social mutual (MSA) and the general national education mutual (MGEN) to intervene for the implementation of this purpose, in particular for the sending to the persons concerned of information relating to research programs; only personal identification data will be communicated to these health insurance organisations, so that they can identify the policyholders concerned and collect their contact details directly from their information systems. Article 3. VIII of the decree of May 12, 2020 provides for the authorization of access by national and local health insurance organisations, their subcontractors and persons made available to these organizations by temporary employment companies, to identification data and contact details of the persons concerned by Contact Covid, for the purpose of evaluating the contact tracking system (contact tracing). The Commission takes note of the Ministry's clarifications according to which: the implementation of this evaluation would be ensured by the CNAM, which will select a panel of people and send them by e-mail a link to the evaluation questionnaire; only the electronic contact details of the people will be used by the CNAM for this purpose. It therefore invites the Ministry to modify the draft article accordingly. The Commission notes that these two modifications will allow the aforementioned organizations and their subcontractors to have access to directly identifying data, including the registration number in the directory national identification number for natural persons (NIR), and to the contact details of persons for the purposes of epidemiological surveillance and research on the virus. In this respect, the Commission notes that: Article 11 of

the law of 11 May 2020 allows the reuse of Contact Covid and SI-DEP data for epidemiological surveillance purposes at national and local levels, as well as research on the virus and means of combating its spread, subject to the collection of information, to delete the surnames and first names of persons, their registration number in the national identification directory of natural persons, their address and their telephone and electronic contact details. In this respect, it should be noted that it results from the parliamentary debates which preceded the adoption of the aforementioned law that the identification data and contact details of persons are only collected for the purposes of identifying contaminated persons and /or persons presenting a risk of contamination as well as directing these persons towards the most appropriate measures; Article 3. VI of the decree of 12 May 2020 provides that only data that has been subject to adequate measures of pseudonymization to ensure the confidentiality of the identity of individuals may be transmitted for research purposes. If the Commission understands the usefulness of having directly identifying data in order to be able to inform individuals of the carrying out of research projects, invite them to participate in it and evaluate the operation of the device, it nevertheless draws the attention of the Ministry to the fact that the legislator intended to limit the reuse for the purposes of search to pseudonymised data. Consequently, it wonders about the compatibility of the envisaged modifications, provided for by a standard of a regulatory nature, with the legislative provisions relating to Contact Covid. personal data for research purposes, the Commission recommends that individuals be given the opportunity to oppose the reuse of their data before any reuse for this purpose. health insurance for the purposes of epidemiological surveillance, research on the virus and on the means of combating its spreadThe Commission therefore considers that the modification envisaged by the draft article will lead to the transmission to third-party organizations of directly identifying data for research, which does not appear to comply with the provisions of article 11 of the law of May 11, 2020. It considers that q that only the CNAM having the directly identifying data and the contact details of the people, in its capacity as data controller of Contact Covid, should be able to access this data. Therefore, any research project that would require the use of such data can only take place under the joint responsibility, where applicable, of the CNAM. acknowledgment that the Ministry has indicated that: the implementation of this evaluation will be carried out in two stages: first the reuse of the electronic contact details of the people for the purpose of sending the evaluation questionnaire of the device, then the realization the evaluation by the people contacted who so wish; the questionnaire will not contain any open fields. The Commission considers that this evaluation is compatible with the purposes of Contact Covid mentioned in article 1.III of the decree of May 12, 2020 and more particularly that relating to epidemiological surveillance, research on the

virus and the means of combating its spread. It considers that this evaluation, which supposes the implementation of a separate treatment from Contact Covid, will have to be the subject of formalities with the Commission if the said treatment pursues evaluation purposes in the field of health within the meaning of articles 72 and following of the Data Protection Act. It recalls, however, that these formalities will not be required if the processing is carried out under the conditions provided for in Article 65-6° of this same law. Concerning the information of persons, the Ministry indicated that: persons will be invited to participate in the evaluation by sending an e-mail referring to the link to the questionnaire; this e-mail will be accompanied by an information notice on the purposes of the questionnaire. The Commission takes note of this and draws the attention of the Ministry on the fact that the invitation e-mail and the information notice should not make it possible to deduce information on the state of health of the recipient person. In addition, it recommends the use of the messaging system secure area of the Ameli account in order to limit the risks to the privacy of individuals. On the processing implemented by the ARS, the Commission notes that Article 14 of the decree of 12 May 2020 authorizing the ARS to use subcontractors for carrying out health surveys, guidance for monitoring and supporting people and epidemiological surveillance, is repealed and replaced by a draft chapter 3 relating to the processing implemented by the ARS. The Commission notes that the processing covered by this draft chapter 3 refers to processing already implemented by the ARS on the basis of the decree of June 30, 2020 setting the list of organizations or services responsible for a service mission public who can implement the processing of personal data for the purpose of responding to a health alert, under the conditions defined in Article 67 of the Data Protection Act, which will end one year after their creation. categories of recipients The Commission notes that the categories of data collected by the ARS as part of their health investigations will be identical to those collected within Contact Covid and SI-DEP. It also notes that the recipients of pseudonymised data for research purposes between Contact Covid, SI-DEP and processing implemented by the ARS are identical. processing implemented by the ARS are intended to integrate the SNDS. of the SNDS. In addition, the Commission invites the Ministry to supplement draft article 14-2 in order to specify, like article 11 of the law of 11 May 2020, article 3.VI relating to Contact Covid and Article 10. III relating to SI-DEP, the data that will have to be deleted during the pseudonymisation process. On information and the exercise of rights The Commission notes that no provision of the draft Chapter 3 details the conditions under which the data subjects will be informed of the implementation of processing by the ARS. It recalls that non-compliance with the procedures for informing people gave rise to formal notices from ARS in the context of its previous control missions. It points out that the ARS, as managers of the processing they implement, are required

to individually inform the persons concerned under the conditions provided for by the provisions of Articles 13 and 14 of the GDPR. In this respect, they cannot rely on the information provided to people by the managers of Contact Covid and SI-DEP and must specifically inform people of the reuse of their data, if necessary. The Commission therefore requests that the project of Chapter 3 be supplemented accordingly. Draft Article 14-4 provides that the right of opposition is not applicable to the processing carried out by the ARS, with the exception of pseudonymised data transmitted to the PDS and to the CNAM for research purposes. The Commission notes in this respect that people will be able to exercise their rights with the regional health agency. It invites the Ministry to specify the criteria of territorial and material jurisdiction of the ARS in the information documents given to people. In order to promote and facilitate the exercise by the people concerned of their rights, the Commission considers that when a person has exercised his right of opposition with the data controller of Contact Covid or SI-DEP, for the transmission of his data to the PDS or the CNAM for research purposes, the mention of this opposition should be postponed on the data transmitted to the ARS. On the security of information systems The Commission points out that it was seized of a draft text which was not accompanied by any details on the technical methods for implementing the processing envisaged, both from a functional point of view and from that of the security of information systems. The Commission recalls that the provision of a data protection impact analysis is essential for assessing the conditions for implementing the processing operations referred to it. It therefore invites the Ministry to send it this document as soon as possible. Although the Commission does not question the interest of these processing operations implemented in order to combat Covid-19, it notes that the changes introduced by this draft decree, on the one hand, aim to bring together data from different existing processing operations and to create new ones, relating to similar categories of data but pursuing different purposes and, on the other hand, multiplying the interconnections as well as the data flows between these information systems. It can therefore only regret not having received the corresponding technical documentation, in order to assess the risks that these developments are likely to generate. The President Marie-Laure DENIS