

Deliberation 2020-049 of April 23, 2020 National Commission for Computing and Liberties Nature of the deliberation: Opinion  
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providing an opinion on a book of charges for the certification of digital safe services  
(request for opinion no. 20003671)

The National Commission for Computing and Liberties, Seizure by the National Information Systems Security Agency (ANSSI)  
of specifications for the certification of digital safe services; 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 on the protection of natural persons with regard to  
the processing of personal data and the free movement of such data, and repealing Directive 95/46/EC; Having regard to the  
Post and Electronic Communications Code, in particular its article  
L. 103; Having regard to law n° 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms; Having  
regard to decree n° 2018-418 of May 30, 2018 relating to the methods of implementation of the service of digital safe;  
Considering the decree n° 2018-853 of October 5, 2018 relating to the conditions of recovery of the documents and data  
stored by a digital safe service; Considering the decree n° 2019-536 of May 29, 2019 modified taken for the application of law  
n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Considering the deliberation n° 2013-270 of  
September 19, 2013 carrying recommendation relating to services known as safe- digital or electronic box intended for  
individuals; Having regard to deliberation no. 2018-102 of March 15, 2018 on the repeal of labeling standards; On the proposal  
of Mr. François PELLEGRINI, commissioner, and after hearing the observations of Mrs. Nacima BELKACEM, commissioner of  
the Government, Issues the following opinion: As preliminary, the Commission recalls that the legal framework applicable to  
digital safe services was created by law no. 2016-1321 of 7 October 2016 for a digital Republic. Section I of Article 87 of the  
aforementioned law, codified to date in Article L. 103 of the Post and Electronic Communications Code (CPCE), thus provides  
for the characteristics necessary to qualify a service as a digital safe and the possibility for a digital safe service to benefit from  
state certification. Provision is made for the procedures for certifying digital safe services to be defined by a Conseil d'Etat  
decree taken after consulting the Commission in accordance with Article L. 103 of the CPCE, which is the subject of a  
separate opinion. It notes that the specifications submitted to it for opinion set the security requirements that a digital safe  
service must meet in order to benefit from certification by the ANSSI. The Commission recalls that the provider of a digital safe

service must also ensure compliance with the regulations relating to the protection of personal data. It also recalls that it has ruled on several occasions on digital safe services, starting in 2013, by adopting a recommendation on so-called digital or electronic safe services for individuals (deliberation no. 2013-270 of September 19, 2013) and in an opinion on two projects decrees implementing article 87 of law n° 2016-1321 of October 7, 2016 for a digital Republic relating to the digital safe service (deliberation n° 2017-178 of June 1, 2017). These general elements recalled, the specifications call for the following observations on the part of the Commission: Firstly, the Commission recalls that its labeling activity ended with the entry into application of the European regulation on protection of personal data referred to above and that the reference system for issuing labels for digital safe services, adopted by deliberation no. 2014-017 of January 23, 2014, was repealed by deliberation no. 2018-102 above. In this context, it therefore requests that the specifications, in particular its appendix 2, be updated in the light of this development. The Commission recalls in this regard that deliberation no. 2013-270 of 19 September 2013 providing a recommendation on digital safe services remains in force and constitutes a frame of reference in this area. Secondly, if article R. 55-5 of the CPCE provides that the identification of the user when accessing the digital safe service is ensured by an electronic identification means adapted to the security issues of the service, the Commission notes, however, that the specifications only cover the substantial level of identification for access to a digital safe service. It therefore considers that these specifications should be supplemented in order to take into account the various means of electronic identification that may be offered, including the possibility of opening a digital safe under a declarative identity, a user name or a pseudonym. The Commission also notes that the identification of the user cannot be carried out by means of the number of registration of persons in the national directory of identification of natural persons (NIR) in accordance with its deliberation n° 2013-270 above. It also recalls that the use of this identification number is strictly regulated by article 30 of the aforementioned law of January 6, 1978. Thirdly, the Commission recalls that Article L.103-4° of the CPCE provides for the possibility for a safe deposit box service provider to access the personal data of its users in order to process these documents or data for the sole benefit of the user and after obtaining his consent in compliance with law n 78-17 of January 6, 1978 relating to data processing, files and freedoms. However, it observes that the specifications do not mention the procedures for obtaining this consent. It therefore considers that the specifications could usefully be supplemented in this sense. Fourthly, the Commission recalls that in the absence of ministerial approval for the hosting of health data, the safe Fort Numérique is prohibited from processing such data. It considers that particular vigilance will have to be taken to comply with this condition. Fifthly, the

Commission recalls that when a digital safe service is intended to store data for the long term, it recommends that a backup copy of the decryption key be entrusted to a trusted third party in order to allow the user to access his data in the event of loss of his key in accordance with deliberation n° 2013-270 referred to above. It therefore considers that a key recovery procedure should be provided for in the specifications. Finally, the Commission draws ANSSI's attention to the importance of taking into account the performance of an impact analysis on data protection (AIPD) as proof of compliance with the GDPR in the certification process of a digital safe service, when this may include processing of personal data likely to generate a high risk for the rights and freedoms of natural persons.-The President

Marie-Laure DENIS