

Deliberation 2021-068 of June 3, 2021 National Commission for Computing and Liberties Nature of the deliberation: Opinion

Legal status: In force Date of publication on Légifrance: Wednesday August 18, 2021 Deliberation n° 2021-068 of June 3, 2021

providing an opinion on a draft decree authorizing the implementation of an automated processing of personal data called "Portail Autotest Covid-19" (request for opinion no. 21009798)

The National Commission for Computing and Liberties, Seizure by the Minister for Solidarity and Health of a request for an opinion concerning a draft decree authorizing the implementation of an automated processing of personal data called Portal COVID-19 self-test; 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 regulations on data protection); Having regard to Law No. 78-17 of 6 January 1978 as amended relating to data processing, files and freedoms; After having heard the report by Mrs Valérie PEUGEOT, commissioner, and the observations of Mr Benjamin TOUZANNE, government commissioner, Issues the following opinion:

The Commission has been informed of a draft decree authorizing the implementation of data processing staff, place é under the responsibility of the General Directorate for Health (DGS), intended to collect the results of the covid-19 self-tests for the purposes of epidemiological monitoring and statistical analysis by the organizations involved in the management of the epidemic namely, according to article 3 of the draft decree, the DGS, the regional health agencies (ARS), the National Health Insurance Fund, the Ministry of National Education, the National Public Health Agency ( ANSP) and the Department of Research, Studies, Evaluation and Statistics (DREES). People who have carried out a self-test will be able to create an account and indicate the result of it on the Covid-19 Self-test Portal. Depending on the result, information intended to guide the person, in particular to invite them to carry out a PCR test if necessary, as well as a reminder of the health instructions to be applied, will be displayed. The person will have access to a receipt attesting to the completion of a self-test, without mentioning its result. According to the details of the ministry, the receipt can neither be used to prove the result of a test, nor be used within the framework of the health pass whose implementation is provided for by the bill relating to the management of the exit of health crisis. The Commission takes note of this. The Covid-19 Self-test Portal will not be reconciled or interconnected with other information systems. Without commenting on the scientific relevance of the system, which does not fall within its competence, the Commission notes that the device is based on the results of self-tests not presenting a level of reliability equivalent to those carried out by health professionals and that the reporting of this information is based on the voluntary

participation of the persons. On the legal basis of the processing and the condition allowing the processing of health data Article 1 of the draft decree specifies that the processing will be based on the consent of the persons concerned, pursuant to Article 6.1.a of the GDPR. According to the details of the ministry, the consent to the collection of information will be collected when creating the account, then at each connection and each validation of the result of the self-test on the portal, through checkboxes. The Commission takes note of this and invites the Ministry to be vigilant in respecting the principle of freedom of consent concerning the filling in of information in the Covid-19 Self-test Portal, in particular with regard to self-test campaigns carried out in school or in a professional context. In addition to the existence of a legal basis provided for in Article 6, the Commission recalls that the processing, which falls under the GDPR, will relate to sensitive data, which is only possible if the one of the conditions provided for in 2 of article 9 of the GDPR is met. The Ministry has indicated that the processing is also necessary for reasons of public interest in the field of public health, thus fulfilling the condition provided for in Article 9-2-i) of the GDPR allowing the processing of data concerning health. The Commission takes note of this and invites the Ministry to modify the draft decree on this point. On the information of the persons concerned According to the details of the Ministry, the persons concerned will be informed of the implementation of the processing by the general conditions of use (CGU) which will be displayed when creating an account on the Covid-19 Autotest Portal. In addition, the Commission suggests the use of the tiered approach in a digital environment recommended by the European Data Protection Board in its guidelines on transparency: information, comprising all the elements in article 13 of the GDPR, could thus be detailed as the user progresses through the Covid-19 Self-test Portal and recalled each time the self-test results are reported. In addition, the ministry indicates that information relating to the Covid-19 Self-test Portal will be disseminated in pharmacies, through press releases and on the website of the Ministry of Health. The Commission takes note of this. In addition, according to the details of the Ministry, the persons concerned will be able to withdraw their consent by deleting the information relating to their account on the portal themselves or by sending a request via a dedicated email address. The Commission takes note of this and invites the Ministry to inform people that the withdrawal of consent, such as the deletion of the account, entails the deletion of the data processed in the portal, with the exception of those which have already been pseudonymised and transmitted for the performance of epidemiological monitoring and the production of statistical analyses. On the filling in of information by a person other than the person who carried out the self-test The Commission notes that only people who carried out a self-test can fill in the information concerning themselves in the Covid-19 Self-test Portal. However, according to the details of the ministry, an exception is

provided for minors: a holder of parental authority may complete the Covid-19 Self-test Portal on behalf of a minor. The holder of parental authority will have access, via his account, to the history of the minors for whom he has filled in information. The Commission takes note of this. It also considers that a similar derogation should be provided for professionals who support people who do not have the necessary digital tools or a sufficient level of expertise, under the Aidants-connect system. The Commission draws the attention of the ministry on the fact that the entry of the result can only be carried out via a digital interface, this device mechanically excludes the part of the population far from digital and is likely to generate a bias in the epidemiological monitoring. On the recipients The ministry has clarified that after pseudonymization of the data by an algorithm identical to that used for SI-DEP and Covid Vaccine, the data collected will be transmitted to the digital department of the ministries responsible for social affairs (DNUM) which will set up a portal grouping together indicators not displaying a count lower than 100. Only organizations involved in the management of the epidemic e, listed in article 3 of the draft decree, will be able to access it. The Commission takes note that the DGS and the DNUM formalize by a legal act the responsibilities which will be devolved to them within the framework of the implementation of the Covid-19 Self-test Portal. On the duration of data retention and the implementation implementation of the processing According to the details of the ministry, the data will be kept for three months from their collection before being deleted. According to the indications of the ministry, the portal will be implemented until December 31, 2021. The Commission therefore invites the ministry to complete the project by explicitly mentioning this date or any element making it possible to determine its duration. On data security and traceability of actions The Commission was not the recipient of the impact assessment on data protection (AIPD) and the Ministry has not yet been able to provide it with the necessary technical information concerning the implementation of the processing. It was therefore unable to verify the security of the processing before its deployment, but specifies that it will be vigilant as to the conditions for implementing the Covid-19 Self-test Portal. The Commission requests that a detailed assessment of the Portal Covid-19 self-test is communicated to it, six months after the start of its implementation. The President Marie-Laure DENIS