

Deliberation 2021-121 of October 21, 2021 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

Opinion Legal status: In force Date of publication on Légifrance: Thursday February 24, 2022 NOR: CNIX2204034X Deliberation

n° 2021-121 of October 21, 2021 providing an opinion on a draft decree amending the decree of March 31, 2021 creating an automated processing of personal data called "SI Honorabilité" (request for opinion no. 21011137) The National Commission for Computing and Liberties,

Seizure by the Minister of Solidarity and Health of a request for an opinion concerning a draft decree amending the decree of March 31, 2021 creating an automated processing of personal data called SI respectability;

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 modified law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; On the proposal of Mrs. Valérie PEUGEOT, commissioner, and after having heard the observations of Mr. Benjamin TOUZANNE, commissioner of the Government, Issues the following opinion: On the purpose of the processing: The draft decree adds a purpose to Article 1 of the decree of March 31, 2021 so that the processing can allow authorized persons to carry out a control of the registration or not in the national automated judicial file of perpetrators of sexual or violent offenses (FIJAISV) of people working with minors in the context of activities under the control of regional health agencies (ARS). According to the details of the ministry, the possibility for the directors general of the ARS to consult the FIJAISV results from the combination of articles 706-53-7 and R. 53-8-24 of the code of criminal procedure, and falls within the framework of the missions entrusted to them by article L. 1431-2 of the public health code. On the persons concerned: According to the details of the ministry, any person having regular contact with minors will be subject to a short-term check. This would concern both employees and non-employees, such as service providers and members of associations. However, the Commission notes that the latter are not explicitly targeted by the draft decree. Indeed, article 1, which modifies the list of data that can be collected in order to request the FIJAISV, provides for the collection of the nature of the following professions: medical profession, pharmacist, medical auxiliary, caregiver, ambulance driver, not considering therefore no other professions, which can be exercised by employees or self-employed persons. In view of the variety of professions that may lead to a check in the FIJAISV. The Ministry plans to add an "other" category to the form, which would be systematically filled in, in order to retain the possibility of knowing the

distribution of the professions checked. If the Commission understands the interest in producing statistics on the professions inspected, it recalls that the Ministry itself intended to limit the collection of information relating to professions by providing that the selection of a profession in the information system using a drop-down menu. The Commission therefore invites the Ministry to complete the list of fields detailing the professions or missions exercised by the persons concerned and to add, as a last resort, an other category, without planning to associate a free field with it. On the recipients and persons who can access the data: Article 1 of the draft decree amends the decree of March 31, 2021 so that the persons designated by the director of the health or medico-social establishment or, failing that, the authorized agents of the ARS can record the data relating to persons whose good reputation is checked by the ARS in the SI Dépose, which makes it possible to request the FIJAISV. According to the details of the ministry, the director general of the establishment concerned will be asked to appoint one or two collaborators. According to the Ministry's estimates, most of the employees will be members of the management team, for example from the human resources department. The Commission notes that the Ministry has undertaken to ensure that the number of agents concerned is limited and that they are made aware of the obligations attached to this authorisation. Article 1 of the draft decree also modifies the decree of March 31, 2021 so that ARS agents authorized by the Director General of ARS can access the data recorded in the SI Retour portal. The Commission notes that only these agents will have access to this portal. According to the details of the Ministry, no condition is a priori set to determine the list of persons within the ARS authorized or designated for the SI Drop and the SI return, in mainly because of the lack of a standard organization chart for these agencies. The Commission notes that the Ministry has undertaken to recommend profiles of people who can fulfill these missions according to their skills or the missions entrusted to them in the instructions addressed to the ARS. III of Article 4 of the order of March 31, 2021 is not amended by the draft order. Thus, the list of recipients of the data recorded in the SI Retour portal but not authorized is not modified. It is therefore not possible for ARS agents who have access to SI return data to communicate them to facility managers. The Commission notes that the Ministry has undertaken to modify the draft decree on this point. On information and the exercise of people's rights: For non-salaried people (service providers, associations, etc.), companies or associations will be informed in advance and will be in charge of a first level of information for people. The Commission notes that the ministry has undertaken to offer standard information documents for these actors in order to facilitate the information of individuals. On the rights of access, rectification and opposition of individuals: The rights of the persons concerned are exercised with the competent ARS and, failing that, with the general secretariat of the Ministry of Health. The latter, who does

not have access to the FIJAISV, will have the task of ensuring that requests for the exercise of rights are taken into account by the ARS. The Commission notes that the Ministry has undertaken to specify these elements in the information document intended for the persons concerned. On data security and traceability of actions: The architecture of the Honorability IS and its security measures have already been analyzed by the Commission and do not present any major new developments. The DPIA and the associated action plan have been updated to take into account the new purpose of the processing, depending on the different types of users and their field of intervention. This partitioning mechanism will thus be reused for the control carried out by the ARS. It notes that the Ministry has reduced the retention period for FIJAISV return codes in accordance with its commitments and that non-incremental identification numbers have been implemented in order to make it more difficult for an attacker or malicious user to deduce information concerning the persons subject to a integrity check. automatic reception of data related to the FIJAISV query has also been implemented. The Commission points out that the implementation of this encryption must be accompanied by mutual authentication between the servers. It notes that a secure platform for calling on the servers managing the criminal record is in progress and invites the ministry to prioritize the development of this platform. The technical traces will be kept for a period in accordance with the recommendations of the Commission. It nevertheless recalls that the retention of these traces must be accompanied by a proactive automatic control mechanism, contributing to the detection of abnormal behavior by the generation of alerts. It recalls that the functional traces must also be kept for a period of six months to one year for security purposes and be backed by a proactive control mechanism, in accordance with its recommendations. The other points of the draft order do not do not call for observations from the Commission. The President

Marie-Laure DENIS