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2023-005 of January 12, 2023 providing an opinion draft decree relating to the creation of a processing of personal data aimed at facilitating the sharing of data between actors of social and professional integration and laying down various provisions on integration

Date of the opinion: January 12, 2023 No. of the deliberation: No. 2023-005 No. of request for an opinion: 22017162 Text concerned: draft decree relating to the creation of a processing of personal data aimed at facilitating the sharing of data between actors of social and professional integration and carrying various measuresThemes: principle tell us once (DLNUF), pooling of data, social support, socio-professional integration, 3DS lawBasis of the referral: article L. 263- 4-1 of the Code of Social Action and FamiliesThe essential: The draft decree determines the operating procedures for the "Employment insertion path" processing which allows the various integration actors to pool certain data relating to support beneficiaries.

This processing is undeniably particularly sensitive due to the number of people concerned, a significant number of whom are in a situation of relative fragility, and due to the variety and sensitivity of the data processed.

The CNIL considers that the guarantees provided for in Article L. 263-4-1 of the CASF (prohibition on the reuse of data for other purposes, in particular the detection of fraud; immediate deletion of the data of persons not benefiting from support existence of a right of opposition) and by its implementing decree (in particular the strict framework for the processing of sensitive data) provide an adequate balance. However, it considers that certain changes to the project are necessary.

In particular, the project should equate data relating to the status of recognition as a disabled worker (RQTH) with data relating to health within the meaning of Article 9.1 of the GDPR.

The project provides that all the organizations "users" of the treatment can access in reading and writing to all the data concerning such or such beneficiary monitored. This wording does not correspond to the planned operation of the system, which does not require or allow the indiscriminate sharing of a person's entire file between the actors. Provision should be made for the existence of several levels of data access authorization in the text creating the processing, to which the Ministry has committed. The National Commission for Computing and Liberties,

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 code of social action and families, in particular its article L. 263-4-1;

Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its articles 8.I.4°.a and 30;

Having regard to Decree No. 2019-341 of April 19, 2019 as amended relating to the implementation of processing involving the use of the registration number in the national identification directory of natural persons or requiring consultation of this directory (framework decree NIR);

After having heard the report of Mr. Philippe LATOMBE, commissioner, and the observations of Mr. Benjamin TOUZANNE, commissioner of the Government, Adopts the following deliberation:
I. The referral
A. Purpose of the referral
Supporting people in integration requires the intervention of several stakeholders (funding organizations, debtor funds for benefits and social assistance, actors who provide support and regular monitoring in the field, service providers training, support, etc.).

The effectiveness of these actions depends on the access of all stakeholders to data relating to the identification of the beneficiary of the follow-up, their eligibility for services, past and future support actions, etc.

Each actor's access to this data is currently done through the collection of supporting documents issued by other organizations concerned or produced by the beneficiary himself. Such an operating scheme mobilizes the resources necessary for redundant entries, and is a source of processing delays, possible errors, and administrative complexity affecting the most vulnerable people.

To avoid these drawbacks, the legislator has laid down the principle of data sharing between all integration actors through a new article L. 263-4-1 of the code of social action and families (CASF) inserted in a new section entitled Data sharing between integration actors.

Introduced by Law No. 2022-217 of February 21, 2022 relating to differentiation, decentralization, deconcentration and carrying various measures to simplify local public action (3DS law), this text falls within the logic of the principle tell us once appearing in articles L. 113-12 and following of the code of relations between the public and the administration (CRPA).

This new article creates a process called Parcours insertion emploi, placed under the responsibility of the public interest group "Platform of insertion". It is actually an evolution of a device already implemented on an experimental basis under the name logbook by the Ministry of Employment.

The processing takes the form of an online platform and meets four purposes provided for by law (identification of beneficiaries, assessment of their situation, monitoring of their journey and carrying out support actions), to which the draft decree adds some new goals.

Guarantees aim to protect the rights and interests of the persons concerned: the law prohibits the reuse of data for other purposes, in particular for the detection or sanction of fraud, and provides for the immediate destruction of the data of persons who do not are not beneficiaries of support services. A Conseil d'Etat decree (DCE) taken after consulting the CNIL must specify the terms of its application and provide for certain necessary regulatory changes.

B. The planned measures

The draft contains four articles containing substantial provisions which will be examined successively, namely: article 1 introduces into the regulatory part of the CASF a new section entitled Data sharing between actors of integration composed of nine articles numbered R 263-1 to R. 263-9 relating to the operating procedures of the Parcours insertion emploi platform; article 3 provides for the possibility of exporting certain data from the planned system to the information systems of the Pôle emploi; finally, article 4 modifies certain provisions of the labor code so as to bring them into line with the designation of the new controller of the planned processing.

II. The opinion of the CNIL

A. Concerning article 1 of the draft decree (operating methods of the information exchange platform)

This provision contains several details on the operation of the system, grouped into nine successive articles listed from R. 263-1 to R. 263 -9 and intended to supplement the CASF.

a. On article R. 263-1

Part II of article R. 263-1 defines three categories of natural and legal persons likely to interact with the processing: people in integration, actors of integration and users .

The project defines users as including people in integration and natural persons designated by the actors of integration who interact with the digital services resulting from the processing.

The project seems to distinguish the notions of users and people in integration (a specific paragraph being reserved for each of these two terms) while then amalgamating the two concepts (the paragraph devoted to users including people in integration). Furthermore, the wording used did not indicate the criterion or criteria used by the actors of integration to designate natural persons as users of the processing.

Asked about this point, the ministry undertook to modify the draft decree in order to: reserve the term users only for natural persons designated by the actors of integration, to the exclusion of beneficiaries of support; specify that only natural persons who are part of the workforce of the integration actors themselves, to the exclusion of any third party to the organization in

question, may be so designated. To this end, it will be specified in article R. 263-1.II.3° of the CASF that these personnel will be designated by the actors of integration within them, in coherence with the mention made in the art project . R. 263-5-I CASF; strengthen the security of user authentication by at least two technical measures: the implementation of a two-factor authentication procedure then, in a second step, the integration of FranceConnect+ for improving user access to the service. The CNIL takes note of these commitments, which it welcomes. b. On Article R. 263-2 This article contains an exhaustive list of the purposes of the processing, classified into six categories, including in particular an item 6° relating to "the production of statistics, national and local, for the purpose of evaluating policies public". The CNIL considers these purposes determined, explicit and legitimate within the meaning of Article 5 of the GDPR; it acknowledges that the data will not be processed for the purpose of producing individual statistics to assess the performance of agents using the services.c. On article R. 263-3 This article contains a list of categories of data likely to be processed within the framework of the system. It is divided into two parts, I and II, the second being devoted to sensitive data within the meaning of Article 9 of the GDPR, and the first to non-sensitive data. On the processing of sensitive data

Part II of the draft article R. 263-3 excludes the possibility of processing sensitive data within the meaning of article 6.1 of the "data-processing law and freedoms", except for two exhaustively enumerated exceptions.

These exceptions are aimed at data relating to health and "to the name and purpose of the actors of integration" since these elements may reveal "sexual orientation, political opinions, philosophical and religious convictions, as well as than criminal convictions, offenses or related security measures".

Such a qualification indeed seems consistent with regard to the case law of the Court of Justice of the European Union (Grand Chamber judgment, 1 August 2022, case C-184/20) according to which certain "administrative" data can reveal information covered by Article 9 of the GDPR.

The CNIL welcomes such wording, which it considers protective of the rights and interests of the persons concerned. On the recognition of the status of disabled worker

However, it observes that as the draft is drafted, the item relating to the RQTH status is found in Part I of Article R. 263-3 of the draft (devoted to non-sensitive data within the meaning of the 9 of the GDPR), and not in Part II of this same article (devoted to sensitive data).

However, the recent case law of the Court of Justice of the European Union devotes a particularly broad assessment of the

notion of sensitive data (see in particular CJEU, August 1, 2022, OT, C-184/20). Given the fact that the attribution of RQTH status to a person is subject to specific medical criteria, is done following a procedure during which medical opinions are involved and leads to the qualification of the general state of health of a person with regard to the notion of "disability", the Commission considers that the information that a person benefits from it constitutes in itself data relating to his or her health within the meaning of Article 9.1 of the GDPR, even if no other element, relating in particular to the precise nature of the disability), is dealt with. The CNIL therefore considers it necessary that the draft decree be amended so that the RQTH status is properly qualified as "data relating to the health".

However, it observes that as the draft is drafted, the item relating to the RQTH status is found in Part I of Article R. 263-3 of the draft (devoted to non-sensitive data within the meaning of the 9 of the GDPR), and not in Part II of this same article (devoted to sensitive data).

However, the CNIL considers that the mention relating to the RQTH status of a person reveals by its very nature data relating to the existence of a disability and therefore constitutes "data relating to his health" within the meaning of Article 9.1 of the GDPR, even if no other element relating to the disability in question (its nature, the degree of incapacity, the necessary adjustments to the workstation, etc.) is processed.

However, the current wording of parts I.1°.f) and II.1° of article R. 263-3 results in considering that the RQTH status does not constitute "data relating to health". The CNIL considers it is therefore necessary that the draft decree be amended so that the RQTH status is properly qualified as data relating to health.

Finally, with regard to the processing of all the different categories of sensitive data mentioned by the draft text, the CNIL takes note of the analyzes of the ministry concerning the mobilization of articles 9.2.b (processing of sensitive data within the framework of the of Labour, Social Security and Social Protection) and 9.2.g of the GDPR (processing of sensitive data necessary for reasons of important public interest) as exceptions for basing their processing. On personnel data support structures

In its current wording, the draft text does not explicitly mention the processing of personal data of employees and agents working on behalf of support structures.

However, the beneficiaries of support can, by connecting to their respective personal interfaces, obtain various information (surname, first name, professional contact details, date and nature of the support measures carried out or planned, etc.)

relating to their interlocutors within of these structures. Asked about this point, the Ministry undertook to modify the draft article R. 263-3 of the CASF so as to include the corresponding details, which the CNIL takes note of. d. On article R. 263-4 This text contains several parts, four of which (numbered I to IV) concern the process of access authorization for the various entities to the planned system and the fifth (V) provides for the keeping of a register authorized entities.

The elements provided by the ministry contain detailed details relating to the various security measures provided for in this context, as well as the applicable security standards. These elements do not call for specific comments from the CNIL.e. On article R. 263-5 Part I of article R. 263-1 establishes the list of integration actors likely to have access to the new system. This designation is made by reference to 1° to 4° of I of article L. 263-4-1 of the CASF and concerns a large number of organisations.

The current wording of part I of article R. 263-5 authorizes all of them to have read and write access to all the data contained in the processing (including sensitive data).

Such wording suggests that some integration actors may have access to data that they will in principle not need to know.

However, it follows from the elements communicated by the ministry that "only the members of the monitoring group have access to all the personal data of the person for whom they are responsible", while "the State services responsible for employment and professional equality", they will only be able to access aggregated data for the purposes of "production of statistics, national and local and for the purpose of evaluating public policies". In addition, the ministry indicated that "in principle, the objective of the processing is to give any member of the follow-up group a first level of information on the existence or not of care for the person by a professional in a field of intervention (mobility, health, etc.) The processing does not allow detailed information to be given on the nature of the obstacles to be removed and, consequently, on the data precisely recorded within the framework of the system ". If this objective seems to respect the principle of minimizing data, the current wording of article R. 263-5 nevertheless seems to be considerably broader and does not reflect this operating scheme. Indeed, no allusion seems to be currently made to "first level" information, d on the one hand, and "data precisely recorded within the framework of the device", on the other hand. On the contrary, the wording of the project only seems to provide for two vast and undifferentiated levels of authorization: "read and write access to all the data as well as the possibility of automated import of all the data"; "access in reading and writing to all the data as well as the possibility of automated import of all the data with the exception of sensitive data". Under these conditions, the ministry undertook to modify the project in order

to show all the methods of access to the data recorded in the processing: - only the members of the monitoring group, within each actor of the integration, will have access to all the data of the processing, and this concerning the only people they monitor;

- the identity and contact data of the beneficiaries of support, excluding any data entered in respect thereof, will be accessible to all the professionals mentioned in 1° to 3° of IV of the 'art. R. 263-4 current, including when they do not intervene in the accompaniment of these people;

- the State services responsible for employment and professional equality mentioned in 1° of Article L. 5311-2 of the Labor Code will, on the other hand, have access to all the processing data, but for the pursuit of the sole statistical purposes provided for in 6° of article R. 263-2. The CNIL takes note of the ministry's commitments. f. On article R. 263-6 This provision establishes, for the benefit of people benefiting from support, the possibility of access in reading and writing to the data concerning them.

Read together with draft article R. 263-3.I.4°, this provision seems to apply to all data processed, which could include connection log data. that the project will be modified in such a way as to avoid such an interpretation, which the CNIL welcomes. g. On article R. 263-7 This text sets out the procedures for informing and exercising the rights of individuals.

In this respect, the text mentions "the rights of access and rectification of data, the right to limitation and the right of opposition", which it is specified that they are provided for "respectively in Articles 15, 16, 17, 18 and 21" GDPR.

In this respect, the Ministry has confirmed that the right to erasure will be expressly mentioned in said article and may be exercised under the conditions provided for by the corresponding provisions of the GDPR. The Commission takes note of the Ministry's commitment. h. On articles R. 263-8 and R. 263-9 Article R. 263-8 sets the retention periods in the active database of the data processed within the framework of the system at two years from the last individual communication with the person in insertion (excluding the possibility of longer storage in intermediate archives in the event of any disputes).

The wording used seems to indicate that this retention period will apply to all data processed, including connection logs (included among the data processed in accordance with article R. 263-3.I.4°).

However, the determination of a shorter retention period, specific to this particular category of data, is precisely the subject of the proposed article R. 263-9. Asked about the articulation of these two provisions, the ministry indicated that the wording of the draft decree will be clarified, and that the connection logs would be kept for six months, which the CNIL takes note of. B. On article 2 of the draft decree (processing of the NIR) The principle of using the NIR in this context is provided for by article L.

263-4-1 of the CASF.

The purpose of article 2 of the draft decree is to make the "NIR framework decree" consistent.

The CNIL recalls that the existence of a single text which exhaustively lists all authorized uses of the NIR constitutes a guarantee for the rights and interests of the persons concerned.

It considers that the planned modifications to the NIR decree must be made prior to the implementation of the system, even though the possibility of processing the NIR in the planned system is already enshrined in a legislative provision (article L 263-4-1 of the CASF). The CNIL therefore welcomes the update of the "NIR framework decree" whose content of the planned modifications does not call for comments on its part. C. On article 3 of the draft decree (possibility of importing certain data processed by Pôle Emploi) Article 3 of the draft text submitted for examination by the Commission provides for the modification of article R. 262-104 of the CASF, which currently lists the categories of data likely to be processed as part of the "@ RSA" processing.

This is a drafting error, the text actually aiming to modify article R. 262-107 of the CASF.

This modification will have the effect of allowing an automated import of data recorded in the "@RSA" processing to the processing implemented by Pôle Emploi called "Information system concerning jobseekers and employees". This new provision, which participates in the pooling of data from integration actors as described by article 1 of the draft decree, does not call for any particular observations from the CNIL. D. On article 4 of the draft decree (making certain provisions of the labor code consistent) economic activity, provided for in Articles R. 5132-1-19 and following of the Labor Code. These modifications consist in: entrusting the responsibility for the existing processing to the GIP Platform for Inclusion instead of the Minister for Labor; adding the General Delegation for Employment and Vocational Training (DGEFP) as the recipient of the data ; finally, to make the provisions relating to the procedures for exercising the rights which must be exercised with the GIP Inclusion Platform consistent. The CNIL takes note of these modifications which do not call for any comments on its part.

M. L. Denis