

Deliberation 2019-155 of December 19, 2019 National Commission for Computing and Liberties Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Tuesday August 04, 2020 Deliberation No. 2019-155 of December 19, 2019 providing an opinion on a draft decree amending decree no. 2019-969 of September 18, 2019 relating to the processing of personal data relating to the resources of social security beneficiaries (request for opinion no. 19020628)

The National Commission for Computing and Liberties, Entry by the Minister for Solidarity and Health of a request for an opinion concerning a draft decree amending decree no. 2019-969 of September 18, 2019 relating to the processing of personal data relating to the resources of the insured persons; Having regard to Council of Europe Convention No. 108 for the protection of individuals with regard to automatic processing of personal data; Having regard to Regulation (EU) 2016/679 of the Euro Parliament 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; Having regard to the draft social security financing law for 2020, in particular its article 52, as adopted by the National Assembly in final reading on November 26, 2019; Having regard to law n ° 78-17 of January 6, 1978 modified relating to data processing , files and freedoms, in particular its article 8-I-4-a); Having regard to decree n° 2012-53 of January 17, 2012 relating to the common national directory of social protection (RNCPS); Having regard to decree n° 2018 -466 of June 11, 2018 amending Decree No. 2017-351 of March 20, 2017 creating the processing of personal data called the digital portal of social rights (PNDS); Having regard to Decree No. 2019-341 of April 19, 2019 relating the implementation of processing involving the use of the registration number in the na directory identification of natural persons or requiring the consultation of this directory; Having regard to decree n ° 2019-536 of May 29, 2019 taken for the application of law n ° 78-17 of January 6, 1978 relating to data processing, to files and freedoms; Having regard to decree no. 2019-969 of September 18, 2019 relating to the processing of personal data relating to the resources of social security beneficiaries; Having regard to the decree of June 16, 2017 creating by the general management of public finances of an automated processing of personal data for the management of the withholding tax implemented by collectors not falling within the scope of the nominative social declaration or paying replacement income (PASRAU); Having regard to the deliberation no. 2019-072 of May 23, 2019 providing an opinion on a draft decree relating to the creation of personal data processing relating to the resources of social security beneficiaries; On the proposal of Mr. Alexandre LINDEN, commissioner, and after having heard the observations of Mrs. Nacima BELKACEM, Government Commissioner, Issues the following opinion: The Commission has been seized by the Minister for Solidarity and Health, on the

basis of Article 8-I-4° - a) of the amended law of January 6, 1978, for an opinion on a draft decree amending decree no. 2019-969 of September 18, 2019 relating to the processing of personal data relating to the resources of insured persons. On the revaluation differentiation of old-age pensions: Article L. 161-23-1 of the Social Security Code provides for the principle of annual revaluation of old-age pensions paid by the general scheme and the schemes aligned with it (i.e. around thirty of different diets, affecting about twenty million people). To this end, a quotient is calculated annually by the National Institute of Statistics and Economic Studies (INSEE) under the conditions provided for in Article L. 161-25 of the same code. This single coefficient is aligned with the change in the annual average of consumer prices (excluding tobacco) and applies to all mandatory pension schemes. The 2019 social security financing bill for the year 2020 (hereinafter PLFSS) introduces an exception to this unique revaluation system. Indeed, article 52 of the forthcoming text, in its version resulting from the final adoption by the National Assembly in reading of November 26, 2019 , provides that in 2020, the revaluation of retirement benefits will be done in a differentiated way. More concretely, this development is reflected in two essential modifications: on the one hand, a single rate is replaced by several different rates; on the other hand, the calculation of revaluation rates will take into account the amount of benefits received by pensioners compensated by the pension branch, as opposed to a method of calculation based on a single national index. The planned reform will result in create a digressive revaluation system. In this way, recipients with the lowest incomes will see their pension revalued at a higher rate than the rates applicable to people receiving higher replacement incomes. This reform will be one-off. Indeed, and subject to new changes to the texts to come, the current wording of the aforementioned article L.161-23-1 of the Social Security Code will be maintained for the revaluations to be made for the year 2021 and the following. Also, to implement the reform, it appears necessary to set up a processing of personal data making it possible to evaluate the amount of pensions paid to the beneficiaries of a pension, with a view to assigning them a rate of revaluation. The draft decree submitted to the Commission for its opinion meets this objective. The Commission considers that the purposes pursued by the processing are determined, explicit and legitimate, subject however to the definitive adoption of Article 52 of the draft LFSS. On the operation of the device: In order to achieve the stated objectives, the draft decree provides for the creation of a new processing, known as the CARI calculator, and the use of two existing devices: the common national directory of social protection (RNCPS); the monthly resources mechanism (hereafter DRM and previously known as the monthly resource base or BRM); The draft provided to the Commission provides that the processing will be carried out using the following steps: initially , a request is made by the National Old Age Insurance Fund (CNAV) in the

RNCPS to identify the beneficiaries of retirement pensions and the retirement schemes to which they are affiliated. The results of this query are used to create a call file; secondly, the call file is used to query the DRM system, and in particular PASRAU – individual database, to identify the amount of basic and supplementary pensions paid by each scheme to each of the persons concerned. This step allows the CARI calculator in particular to add up the different amounts that an individual affiliated with several pension schemes can receive at the same time; in order to take into account the different payment schedules for retirement pensions (monthly, but also quarterly, half-yearly or yearly), the DRM query is performed in two successive stages, with a historical depth of three months and one month, respectively. Subsequently, a monthly average of the amounts of retirement pensions is calculated for each beneficiary; in a third step, a revaluation rate corresponding to the various management rules identified, will be calculated for each beneficiary according to the average obtained. A list associating this rate with the identification data of all the people receiving retirement allowances will thus be generated; finally, in a fourth step, the CNAV will be responsible for communicating this rate, with the exception of any other data. relating in particular to people's income, to the various bodies responsible for the management of specific pension schemes. On the nature of the data: The ministry has indicated that the data used for the purposes of compiling the appeal file will be the surname, first name, date of birth, identification number in the directory (NIR), date of obtaining it, retired status, codes of organizations (national and manager) of attachment, risk of retirement as well as risk of supplementary retirement. As a reminder, the applicable regulations consider retirement as a risk likely to impact a person's earned income, in the same way as illness, disability or professional incapacity. This risk is considered covered when the person concerned meets the conditions (age, number of quarters contributed, etc.) necessary to benefit from the benefits. The retirement risk and supplementary retirement risk data categories are intended to indicate the status of users in this regard. Once the call file has been compiled, querying the DRM will enable the CNAV to obtain two additional amount of basic retirement pensions as well as the amount of supplementary retirement pensions. obtained as well as a list of the other national bodies in the retirement branch declared to the RNCPS for the individual concerned. It is specified that these bodies will only be recipients of the data of persons who actually fall within their respective scope, on the one hand, and without any information relating to the level of income of these persons. The Commission considers that this information is adequate, relevant and limited to what is necessary with regard to the purposes for which they are processed. On the retention period of the data: Concerning the retention period of the data thus obtained, as well as the derived data (the revaluation rates), the elements provided to the Commission indicate that the data collected via

the RNCPS and the DRM will be kept for a period of one year. The elements transmitted to the managing bodies (in particular the revaluation rate) will be kept for a period of six months. The ministry explains this need for conservation by a probationary purpose in the event of a dispute or litigation relating to the calculation of the rate. The Commission considers that these durations do not exceed those necessary with regard to the purposes for which they are processed. On the recipients of the data: It follows from the elements provided by the Ministry that only the CNAV will be the recipient of the call file obtained in the first stage of the planned treatment, to the exclusion of any other organization. Similarly, the revaluation rates generated by the CARI module will only be communicated to the pension management organizations, and this concerns only the population of pensioners for whom these organizations assume effectively the management of retirement benefits. To the extent that the proposed treatment results in a modification of certain characteristics of PASRAU processing – individual database and DRM – restitution service, the Ministry and the CNAV, jointly responsible, have updated the data protection impact assessments (AIPD) drawn up for these two processing operations. security measures deployed as part of the DRM system, as well as the relatively insensitive nature of the revaluation rate produced by the CARI module and communicated to the managing bodies (as opposed in particular to the data relating to people's income, appearing in the DRM) , these DPIAs do not reveal any significant residual risks for the persons concerned. According to the elements communicated by the Ministry, only collective information of the persons concerned will be provided through the websites service-public.fr, securite-sociale.fr, cnav.fr, with the exception of any individual and personalized communication. The Commission considers that these methods of information comply with the provisions of c) of part 5 of article 14 of the RGPD. On the rights of persons: Concerning the existing processing PASRAU - base individuals and DRM - restitution system, the rights of access and rectification will be exercised under the conditions determined by Decree No. 2019-969 of September 18, 2019, cited above. The right of access to data processed as part of the new processing (CARI calculator) may be exercised with the CNAV. Given the punctual nature of the planned processing, which will only give rise to a single communication of the rate calculated during each of its two waves, no data rectification procedure specific to the CARI system has been provided for. However, the persons concerned may exercise their right rectification directly with the management bodies concerned, in the event of the need to correct or update the rate transmitted. The right of opposition does not apply to CARI processing because the processing is based on a legal obligation. The Commission takes note of these elements which do not call for any particular observations. On data security: The Commission takes note that the transfer of the data necessary for the CARI module and then of the revaluation

rate s will be carried out via the DGE system, which is an exchange management system provided for in Article R. 114-31 of the Social Security Code and guaranteeing, among other things, the confidentiality and traceability of the information exchanged, as well as the recognition of the sender and recipient of the data exchanged. Cryptographic protocols, such as TLS, provide these security guarantees. The Commission recommends using the most up-to-date version of TLS possible. revaluation will be carried out via a tool called CX, also allowing secure exchanges. However, the security guarantees offered by this tool have not been specified by the Ministry. authentication of exchanges, for the provision of files to external recipients. The CARI module only performs a calculation of revaluation rates, intended for the various pension management bodies. There is therefore no provision for access to the database by CNAV agents. However, administration and query access are provided. In this respect, the Commission recalls that the password policy adopted by the organization must comply with the recommendations of deliberation no. 2017-012 of 19 January 2017 adopting a recommendation relating to passwords. The Commission notes that this database is purged at the end of the retention period and that the files archived in the DGE system are also deleted at the end of this duration. It recommends the implementation of automatic purge tools, including for files archived in the CX tool. Finally, the other security measures do not call for comments from the Commission. Subject to the previous observations , the security measures described by the data controller seem to comply with the security requirement provided for in Articles 5.1.f and 32 of the GDPR. the regular reassessment of risks. For the President, The Deputy Vice-President Sophie LAMBREMON