

Deliberation 2020-083 of July 23, 2020 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

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No. 2020-083 of July 23, 2020 providing an opinion on a draft decree issued pursuant to Article 3 of Law No. 2020-856 of July 9, 2020 organizing the end of the state of health emergency relating to the retention period of pseudonymised data collected for epidemiological surveillance purposes and research on the covid-19 virus (request for opinion no. 20011769) 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 issued pursuant to Article 3 of Law No. 2020-856 of July 9, 2020 organizing the exit from the state of health emergency relating to the retention period of pseudonymised data collected for the purposes of epidemiological surveillance and research on the covid-19 virus;

Having regard to Convention No. 108 of the Council of Europe for the protection of individuals with regard to 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 individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its article 8;

Having regard to Law No. 2020-546 of May 11, 2020 extending the state of health emergency and supplementing its provisions, in particular Article 11;

Having regard to law n° 2020-856 of July 9, 2020 organizing the end of the state of health emergency;

Having regard to decree n° 2019-536 of May 29, 2019 as amended, taken for the application of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms;

Having regard to Decree No. 2020-551 of May 12, 2020 relating to the information systems mentioned in Article 11 of Law No. 2020-546 of May 11, 2020 extending the state of health emergency and supplementing its provisions;

Having regard to the decree of July 10, 2020 prescribing the general measures necessary to deal with the covid-19 epidemic in the territories which have emerged from the state of health emergency and in those where it has been extended;

Having regard to deliberation no. 2020-051 of May 8, 2020 providing an opinion on a draft decree relating to the information

systems mentioned in article 6 of the bill extending the state of health emergency;

After having heard Mrs Valérie PEUGEOT, commissioner, in her report, and Mrs Nacima BELKACEM, government commissioner, in her observations, Issues the following opinion: storage of pseudonymised data collected for the purposes of epidemiological surveillance and research on the covid-19 virus.

This draft decree is issued pursuant to Article 3 of Law No. 2020-856 of July 9, 2020 organizing the end of the state of health emergency, which supplements the provisions of Article 11 (third paragraph of I) of Law No. 2020-546 of May 11, 2020 extending the state of health emergency and supplementing its provisions:

The retention period of certain personal data may be extended, for the sole purpose of processing mentioned in 4° of II and within the limit of the duration mentioned in the first paragraph of this I, by decree in Council of State taken after public opinions of the committee mentioned in VIII and of the National Commission for Computing and Liberties. This decree specifies, for the data collected before its entry into force, the methods according to which the persons concerned are informed without delay of this extension.

The draft decree thus provides for extending the retention period of pseudonymised data collected within the framework of the SI-DEP and Contact Covid information systems created by decree no. 2020-551 of 12 May 2020 as amended and also specifies the terms information of the persons concerned. The draft decree also provides for the modification of Articles 3 and 9 of the decree of May 12, 2020 referred to above in order, in particular:

- to complete, for the Contact Covid information system, the list of persons authorized to record and consult the data;
- to add, for the SI-DEP information system, a new category of data likely to be recorded: any other number making it possible to identify the patient with certainty.

On the extension of the retention period for data from information systems Contact Covid and SI-DEP The first paragraph of article 1 of the draft decree provides that: Pseudonymised data collected by the information systems provided for in article 11 of the law of May 11, 2020 referred to above ["Contact Covid" and "SI-DEP" information systems] may be kept for a period of six months from the end of the state of health emergency in the treatments implemented by the regional health agencies , the National Public Health Agency and the Department of Research, Studies, Evaluation and Statistics for the sole purpose of epidemiological surveillance at national and local levels.

The Commission notes that this duration is consistent with that provided for by the provisions of Article 11 of the Law of May 11, 2020 as amended by Law No. 2020-856 of July 9, 2020, and in particular the first paragraph of I, which also limits the

lifespan of the Contact Covid and SI-DEP information systems to six months after the end of the state of health emergency. On the methods of carrying out epidemiological surveillance and research on the virus and means of combating its spread The Commission notes that the purposes envisaged are identical to those framed by 4° of II of Article 11 of the law of 11 May 2020 as amended above. This purpose of epidemiological surveillance and research on the virus and the means of combating its spread is also provided for, with regard to the data in the Contact-Covid file, in 4° of III of Article 1 of Decree No. 2020- 551 of May 12, 2020.

The Commission notes, however, that Article 3-I of this same decree provides that specially authorized agents of regional health agencies (ARS) only access data from the Contact-Covid file for the purposes mentioned in 1° to 3. ° of III of article 1. It follows, unless the decree is modified on this point, that the ARS do not seem justified in processing the data from the Contact-Covid file for the purposes of epidemiological surveillance and research on the virus and the means of combating it. its propagation, whether directly identifying data or pseudonymised data.

Article 11 of the aforementioned amended law of 11 May 2020 also provides that the data processed in the context of epidemiological surveillance may not contain the surnames and first names of persons, their registration number in the national identification directory of persons (NIR) and their address.

In this respect, the draft decree mentions the retention of pseudonymised data, however without further details. However, the Commission notes that Articles 2 and 9 of Decree No. 2020-551 of May 12, 2020 as amended list multiple data that can be recorded. It therefore reiterates the request made in its opinion on a draft decree relating to the information systems mentioned in Article 6 of the draft law extending the state of health emergency (deliberation no. 2020-051 of 8 May 2020), so that the draft decree draws up an exhaustive list of data that can be collected for epidemiological monitoring and research on the virus.

In any event, it recalls that, in accordance with the principle of minimization, provided for in Article 5 of the General Data Protection Regulation (GDPR), only data that is adequate, relevant and limited to what is necessary with regard to the purposes for which they are processed must be transmitted to the bodies in charge of epidemiological surveillance or research on the virus. On the retention of data by the health data platform and the National Health Insurance Fund The second paragraph of the Article 1 of the draft decree provides that, in the context of the processing implemented by the health data platform (PDS) and the National Health Insurance Fund (CNAM), these same data may be kept for an identical period .

However, the Commission had noted, in its aforementioned deliberation No. 2020-051 of May 8, 2020, that the transmission of

this data to the PDS and the CNAM would take place in strict compliance with the provisions of the decree of March 23 2020 prescribing the organizational and operational measures of the health system necessary to deal with the covid-19 epidemic within the framework of the state of health emergency.

In this respect, the Commission recalls that this decree has been repealed and that the provisions relating to the centralization of data by the PDS and the CNAM are now provided for in Article 30 of the decree of July 10, 2020 prescribing the necessary general measures to deal with the covid-19 epidemic in territories that have emerged from the state of health emergency and in those where it has been extended.

As such, Article 30 of the aforementioned decree provides that data may only be processed [...] until the entry into force of the provisions taken pursuant to Article 41 of the Law of July 24, 2019 above and no later than October 30, 2020.

The Commission specifies, as it had the opportunity in its deliberation No. 2020-051 of 8 May 2020, that the data from these information systems will only be intended to integrate the National Health Data System (SNDS ) or a permanent warehouse within the PDS only in the event that common law authorizes it.

Thus, subject to changes that may be made to the legal framework applicable to the PDS and SNDS at the end of the retention period provided for by the draft decree, all the data collected during this period must be destroyed.

The Commission considers, moreover, that the processing carried out from the data transmitted to the CNAM and the PDS cannot be implemented after October 30, 2020 if, at the end of this period, the continuation of the processing no longer has legal basis. On the procedures for informing individuals Article 2 of the draft decree specifies the procedures for informing individuals whose data was collected before its entry into force.

The Commission notes that these people are to be informed of this new retention period for pseudonymised data, without delay, by the bodies responsible for the processing carried out for the purposes of epidemiological surveillance, research on the virus and the means to control its spread.

The data controllers would provide this information on their respective websites or by any other means allowing this information to be brought to the attention of the public.

In order to fully comply with the principles of transparency and loyalty provided for by the GDPR, the Commission requests that the dissemination of information on the controller's website not exclude the dissemination of this same information by any other means allowing to bring this information to the attention of the persons concerned.

It takes note of the ministry's commitment to modify the draft decree so that it does not limit the dissemination of information to the sole website of the data controller.

Finally, it also recalls that the information media intended for the persons concerned will have to be updated, in order to show this new retention period. On the addition of categories of persons authorized to record and consult the data from the file Contact Covid Article 3 of the draft decree plans to modify the provisions of Article 3-II of Decree No. 2020-551 of May 12, 2020, in order to complete the list of persons who may be authorized to record and consult data from the Contact Covid file, by certain staff of social and medico-social establishments as well as occupational health services and certain coordination support systems provided for by law.

The Commission takes note of this. On the addition of identification numbers to the list of data in the SI-DEP information system Article 3 of the draft decree provides for the modification of article 9 of the decree of 12 May 2020 in order to allow the collection of any other number making it possible to identify the patient with certainty in the SI-DEP information system, in addition to the surname, first names and date of birth. The draft decree also provides for the possibility of collecting either the NIR or a number enabling the patient to be identified with certainty.

The Commission recalls, however, that the will of the legislator is to impose, in the short term, the use of the NIR as a national health identifier (INS).

The ministry specifies that the collection of a number other than the NIR is justified pending the deployment of the INS, scheduled to start on January 1, 2021.

The Commission nevertheless takes note of the ministry's commitment to modify the draft decree so that it is expressly mentioned that the number allowing the patient to be identified with certainty can only be collected in the event of impossibility of using the NIR.

She also notes that this addition is only intended for the SI-DEP file. As a result, this data cannot be included in the data processed within the framework of the Contact Covid information system.

The other provisions call for no comment from the Commission.

The president,

M. L. Denis