

Deliberation 2021-023 of February 4, 2021 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Saturday April 17, 2021 NOR: CNIL2111165X Deliberation n° 2021-023 of February 4, 2021 providing an opinion on a draft decree creating a processing of personal data called "PARCOURS" (request for opinion no. 20013863) The National Commission for Computing and Liberties, Seized by the Keeper of the Seals, Minister of Justice a request for an opinion on a draft decree creating a processing of personal data called PARCOURS; Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; Considering the modified law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms, in particular its articles 31-I and 89-I; After having heard Mrs. Christine MAUGÜÉ, commissioner, in her report, and Mr. Benjamin TOUZANNE, Government Commissioner, in his observations, Issues the following opinion: aims to record, for the purposes of educational monitoring, management and statistics, data from criminal and civil court decisions concerning minors and adults up to the age of twenty-three, entrusted to establishments and services of the public sector and of the authorized associative sector (SAH) of the judicial protection of youth (PJJ). The Commission notes that this first version of the PARCOURS processing includes identification, tracking and journey data, excluding any sensitive data. This processing is intended to replace the processing referred to as activity management and educational measures 2010 (GAME) framed by a decree of March 20, 2012 creating an automated processing of personal data called activity management and educational measures 2010 . The Commission notes that it must also replace, at least in part, the IMAGES application, created by the decree of October 21, 2005 authorizing the automated processing of data relating to the activity and expenditure related to in charge of education entrusted to the authorized and contracted sector, which will remain only in its financial part and invoicing monitoring. The Commission notes that the planned processing is part of a broader project to overhaul the information systems of the management of the Judicial Protection of Youth (DPJJ) and in the dynamics of digital transformation of the Ministry of Justice. On the general conditions for implementing the system In the first place, the Commission notes that it appears from the information transmitted by the Ministry that, with regard to the methods of resumption of the IMAGES processing in the PARCOURS processing, the purpose relating to the monitoring of the execution of the budget in the order of operations will not be integrated e in COURSE . It notes that this purpose is intended to be implemented from a spreadsheet and that the Ministry undertakes to repeal, as soon as the data migration is completed, the decree relating to IMAGES processing in order to avoid the coexistence of partly redundant

information systems. In any case, it recalls that, in the event that the deletion of the IMAGES processing would lead to additional modifications of the purposes or the data collected of the PARCOURS processing, the act governing the latter should be modified accordingly. Secondly, the Commission observes that the draft order submitted to it is intended to constitute a first version of the PARCOURS processing. It notes that a second version of the processing, the characteristics of which have not yet been determined, is envisaged in order to include in particular input methods containing free fields and comment areas. It calls the attention of the Ministry on the fact that such a change in processing is likely to lead to the collection of so-called sensitive data. In this case, it emphasizes that the processing must then be the subject of prior formalities with the Commission, in accordance with Articles 31-II and 89-II of the amended law of 6 January 1978. Thirdly, the Commission notes that it appears from the elements transmitted by the ministry that PARCOURS processing falls under Regulation (EU) 2016/679 of 27 April 2016 relating to the protection of personal data (RGPD) for data resulting from decisions in civil matters (taken on the basis of articles 375 and following of the civil code, 1183 of the code of civil procedure and the decree of February 18, 1975 for the extension of civil follow-up beyond the age of majority) and directive (EU) 2016 /680 of April 27, 2016 known as Police-Justice as transposed in Title III of the amended law of January 6, 1978 for decisions in criminal matters (taken on the basis of orders no. 45-174 of February 2, 1945 relating to the delinquent childhood and n° 2019-950 of September 11, 2019 on the legislative part of the code of criminal justice for minors). The Commission also notes that a partitioning, within the PARCOURS processing, between the data subject to civil measures and those subject to criminal measures cannot be implemented insofar as such partitioning would not make it possible to have an overview of the young person's journey and the measures concerning him. Finally, the Commission notes that the PARCOURS processing mainly concerns minors. As they are particularly vulnerable, it will be particularly vigilant in implementing measures to ensure that the processing of data relating to this category of persons is subject to appropriate safeguards for their rights and freedoms. On the purposes of the processing Article 1 of the draft decree specifies that the purpose of the processing is to improve the implementation and follow-up of the criminal and civil decisions pronounced by the judicial authority with regard to minors or adults until the age of twenty-three which it entrusts to the services and establishments of the public sector and of the SAH of the PJJ, by making available to authorized persons the details of the judicial and educational path. The Commission notes that the PARCOURS processing has also for purposes: to exploit, for statistical purposes and to manage the establishments and services concerned, the data of the judicial process and educational care. It notes that, for this purpose, almost all the data will

also be stored pseudonymized in an infocentre in order to use them for statistical purposes. According to the ministry, this tool aims to make it possible, on the one hand, to carry out queries on piloting data and, on the other hand, to carry out route and population studies, as well as to evaluate the effects of catches. in care; to assess the effects of the care of minors and adults up to the age of twenty-three in care and of public policies in this area. In addition, the Commission notes that two other purposes of the IMAGES processing, mentioned in the decree of October 21, 2005 mentioned above, will be integrated into the PARCOURS processing, namely the monitoring of the measures entrusted to the authorized associative sector and the control of the accuracy of the memoranda of costs transmitted by the structures associations. The Commission takes note that the draft decree will be amended accordingly and that the impact assessment relating to data protection (DPIA) will be completed. However, it invites the Ministry to further specify the terms of these purposes and recommends that the financial module relating to the monitoring of budget execution in the order of operations, which appears indivisible from the other purposes of IMAGES processing, should also be attached in the long term to the PARCOURS processing. On the rights of the persons concerned Article 6 of the draft decree specifies that the rights of persons are exercised directly with the territorial director of the judicial protection of youth where the educational service in charge of the execution is located. of the judicial decision. In general, the Commission recalls that the exercise of the rights of individuals constitutes an important guarantee with a view to preventing breaches of their privacy, and that the information must be adapted to be easily understandable by individuals. minors. However, it notes that the mixed nature of PARCOURS processing entails particular complexity in the procedures for exercising rights. purposes provided for by the directive, or for other purposes of data processing, that, in accordance with the opinion of the Council of State on a bill to adapt to European Union law Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms (CE, General Assembly (interior section), n° 393836, December 7, 2017), the act having authorized the processing of data to mixed purposes relies on Article 23 of the GDPR to determine a coherent data subject rights regime for all data processed for the various purposes. In accordance with the second paragraph of this article 23, the provisions providing such limitations must be precise and cannot take the form of general authorizations. If the Commission considers that the processing falls under a mixed system, it therefore invites the Ministry to keep the procedures for exercising rights as simple and unified as possible. In this respect, the Commission takes note of the Ministry's undertakes to modify the draft decree in order to indicate that the rights of access, rectification and limitation are exercised without restriction and that, in order to guarantee the protection of the person subject to a processing, the rights to erasure and

opposition do not apply to this processing pursuant to Article 23-1.i) of the GDPR. Firstly, with regard to the information of persons concerned, the Commission considers that the wording of the draft decree relating to the right to information is ambiguous and should be clarified insofar as, in accordance with Articles 48 and 104-I of the amended law of 6 January 1978, the data controller is required to make available to the person concerned the information listed. It takes note of the ministry's commitment to modify the draft decree on this point. In addition, the Commission takes note of the fact that various measures aimed at facilitating the information of the persons concerned are planned by the ministry (automatic preparation of a standard letter, posting in the reception area of educational units, or raising awareness among PJJ staff). Secondly, with regard to the procedures for exercising other rights, the Commission notes that the draft decree provides that the right to object does not apply to processing pursuant to Article 23-1.i) of the GDPR as well as articles 56 and 110 of the law of January 6, 1978. It notes that the absence of this right protects the persons concerned insofar as the exercise of the right of opposition would not allow not to have access to the entire course of the minor or adult until the age of twenty-three and would then be likely to affect the proper monitoring of his course and his care. It notes that the Ministry undertakes to modify the draft act in order to indicate that the information provided pursuant to the GDPR specifies that the right of opposition is waived. It also observes that the right to erasure will not apply, pursuant to Article 17-3.b) of the GDPR, and also acknowledges that the draft decree will be supplemented in order to expressly provide for this. On the retention periods of data: Firstly, article 3 of the draft decree specifies that the data mentioned in article 2 are kept on an active basis until the day on which the person concerned reaches the age of twenty-one. -one year and three hundred and sixty-four days, provided that this person is no longer covered by this date. Otherwise, the data is then kept on an active basis until the day the person reaches the age of twenty-three. According to the ministry, such retention periods are justified by the need to have all of the course of the person concerned in order to ensure appropriate care. people entrusted to the services and establishments of the public sector and the SAH of the PJJ. It notes that this notion also covers care taken independently of any judicial decision, for example in the event of a daytime activity or educational follow-up in detention. From the date on which the data are no longer kept in an active database, they remain accessible for a period of five years to the personnel in charge of litigation management within the office of legislation and legal affairs of the DPJJ . In this respect, the Commission notes that this last retention period is intended to enable the Ministry to respond to any disputes calling into question the State's liability, even without fault, either on the basis of custody or on the basis of the special risk. It also notes that a file stored in the active database is visible to authorized users up to thirty

days after the end date of the last support. At the end of these thirty days, it is no longer visible to any of the authorized users, except in the event of a reactivation of the file on the occasion of a new support. However, the Commission points out that it recommends in the social and medico-social sector that data collected and processed for the purposes of social and medico-social support for individuals not be kept in the active database for more than two years from the last contact from the person who was the subject of this support. Also, she is surprised by the singularity of the solution adopted by the ministry consisting in keeping the file in an active database without resorting to intermediate archiving. It nevertheless considers that protective storage methods are implemented in order to compensate for the length of these storage periods. . Secondly, the Commission notes that the Ministry undertakes to complete the draft order in order to specify the retention period for the databases accessible from the infocentre. It considers that this clarification should be included in Article 3 of the draft decree. The Commission points out that the infocentre, which contains almost all of the processing data, but in a pseudonymised manner, aims to enable users (in particular management controllers) to carry out requests on input by professionals from PJJ establishments and services and, on the other hand, to carry out background and population studies, as well as to assess the effects of care and public policies. Under the terms of the DPIA transmitted to the Commission, these data will be kept for twenty-five years from their transfer. The Commission takes note of the explanations provided by the Ministry to justify such a retention period, namely, on the one hand, its desire to carry out comparative studies on the effects of the ordinance of 2 February 1945 relating to the delinquent childhood and the code of criminal justice for minors on the paths of the people followed by the PJJ and, on the other hand, its desire to ensure a certain consistency with the duration of conservation of the data in the active database. Thirdly, with regard to the functional and technical traces, the Commission notes that the Ministry initially wished to keep the functional traces for a period of six years, and notes that it finally decided to reduce this period to one year. In this respect , the Commission notes that the Ministry specifies that the implementation of automatic trace analysis tools is not planned at this stage of the implementation of the processing. It nevertheless considers that the implementation of such tools appears essential because the only way to guarantee rapid and effective detection of errors or misuse of the planned processing. On the other conditions for implementing the planned processing On the data collected Article 2 of the draft decree lists the categories of data that may be recorded in the processing. Firstly, the ministry specifies that all GAME and IMAGES data will be included in PARCOURS so that users in the public sector only can find as soon as the first connection all the data of the files of the minors and/or young adults supported whatever the sector. In this respect, if it

acknowledges that the last purpose of the IMAGES processing, which constitutes a financial module for monitoring the execution of the budget in the order of operations and will not a priori involve the processing of data personal nature, will not be included in PARCOURS , it nevertheless recalls that it recommended that this module also be integrated in the long term into PARCOURS . As part of the resumption of the purpose, now devolved to IMAGES, of checking the accuracy of the expense reports transmitted by the associative structures by the PARCOURS processing, the Commission notes that the Ministry specifies that the imputation code accounting and the cost of SAH services (per act or per day) appeared to be essential data which was not initially provided for in PARCOURS and which, therefore, it will modify the draft order on this point and supplement the DPIA. The Commission notes that the Ministry also specified that all of the other data useful for verifying the costs invoiced by the SAH is already recorded in PARCOURS since these data are necessary for the implementation of the other purposes. Secondly, as previously noted, the Commission takes note of the fact that the Ministry specifies that the PARCOURS processing will not, in its first version, allow the collection of so-called sensitive data and will not contain any open fields, with the exception of what is provided for the identity data and contact details of the persons concerned which cannot be pre-filled. It notes, in particular, that the health data, likely to be communicated to the actors in charge of minors and young adults, will therefore not be recorded in PARCOURS . Thirdly, the Commission observes, with regard to minors and adults up to the age of twenty-three who are the subject of care by the PJJ, that may be informed, in respect of the data identification, the indication that the person is an unaccompanied minor. In this respect, it notes that, with regard to the determination of this minority in the event that the person concerned does not have identity documents, this information will be communicated by the judicial authority and that no other processing cannot be consulted by any user of PARCOURS for the purposes of determining this minority or verifying this information. , court decisions cannot be recorded in PARCOURS and only the data listed in article 2.-1°-f) of the draft decree can be entered, namely: the date of the decision, the type and the terms of the decision, the legal basis, the prosecution procedure number, the judge's file number, the date and legal qualification of the facts at the origin of the decision, the co-authors (number and minority / majority), the support by the educational service (planned start and end dates, dates of suspension and resumption, duration of the extension, duration of renewal, effective end date), as well as information relating to professional writings (date, nature and addressee) . Finally, with regard to data relating to the relatives of minors or adults up to the age of twenty-three, the Commission notes that the statement concerning the link with the minor or adults up to age of twenty-three will ultimately not be recorded in the first version of PARCOURS and

this information will therefore be deleted from the draft decree. The DPIA will also be updated on this point. Subject to the above, the Commission considers that the data processed are adequate, relevant and not excessive in relation to the purposes pursued. On accessors and recipients In general, the Commission draws the Ministry's attention, given the vulnerability of the category of persons concerned by the processing, to the need to manage with the greatest vigilance the authorizations of the personnel concerned, in order to limit to what is strictly necessary the persons who may have direct access to data. Firstly, article 4 of the draft decree lists the different categories of persons who can access, by reason of their attributions and within the limits of the need to know, to all or part of the data mentioned in Article 2. The Commission notes that access profiles have been configured so that the various users only have open access rights according to their needs. functional and territorial knowledge. With regard to the heads of institutional policies (RPI) and the heads of support for territorial management (RAPT) of the decentralized services of the DPJJ, the Commission notes that access recognized to these people is justified by the fact that they may be called upon to monitor the situations of certain young repeat offenders and that they are also part of the chain of permanence requiring access to consultation during reported incidents. acting as secular citizenship referents in the territorial and interregional departments, the Commission takes note of the Ministry's explanations according to which these people must feed the monitoring of situations of radicalization recorded in the processing called ASTREE by entering a certain number of data from the processing JOURNEY . The Commission takes note that the proposed relationship complies with the regulatory acts governing this processing. Under these conditions and failing to include this connection in the regulatory acts, it nevertheless invites the Ministry, for the sake of transparency, to mention it in the information it provides on this processing on its website. With regard to the technical advisers in the territorial management and in the interregional management as well as the personnel of the evaluation, research and control service (SERC) in the central administration, the Commission notes that these persons must benefit from access to processing in order to be able to data that is useful for their missions of evaluating the care and experimentation systems, or even of monitoring the operation of the establishments and services under their jurisdiction. of monitoring and information (MNVI) of the DPJJ, and to its deputy, the Commission takes note of the explanations of the ministry according to which this access is given necessary in the event of management of a crisis situation and incidents, often with strong media coverage, insofar as the MNVI must be able to bring all the elements of the course and profile of the minors involved to the cabinet of the guard seals and to the director of the PJJ. However, given these details, the Commission wonders whether it is necessary to recognize for this purpose, in principle, access to all processing data for these

persons. On this point, it notes that the latter could not only be the recipients of it, given the need to guarantee a particular reactivation induced by the emergency situation, which forces them to bring up useful information as quickly as possible. at the highest level. Secondly, article 5 of the draft decree specifies the categories of recipients of all or part of the data mentioned in article 2. With regard to the National Observatory for Child Protection (ONPE) , the Commission notes that under Articles D. 226-3-3 and D. 226-3-5 of the Social Action and Family Code, the data transmitted to the ONPE must be anonymous. In this regard, it recalls that it had considered, in its deliberation No. 2020-062 of June 11, 2020 providing an opinion on a draft decree amending Articles D. 226-3-3 to D. Code of Social Action and Families and organizing the transmission of information in anonymous form by the Ministry of Justice to the ONPE that, given the date of adoption of the legislative provisions in question, prior to the GDPR, and the fact that article L. 226-3-3 of the code of social action and families provides that the information is transmitted for the purposes of exploitation conditioned on the succession or the simultaneity of [s] measures, the will of the legislator is to allow the transmission to the ONPE of pseudonymised data within the meaning of the GDPR. The other provisions do not call for any additional observations on its part. On the security measures Concerning user authentication, the Commission notes that the AIPD specifies the fact that it will be delegated to the Ministry's SSO (Single Sign On) of justice pending the deployment of strong authentication by agent card. With regard to the solutions implemented to limit the risks of loss of confidentiality of identity data and monitoring of the path of young people, the possibility of exporting this data being proposed, the Commission retains the implementation of a limitation of the data extracted to what is strictly necessary in respect of the right to know of the agents of the DPJJ, the implementation of nominative traces and the appearance of an awareness message during each extraction. She notes that the ministry also indicates that a voluntary action is necessary to make the export nominative. The Commission recalls the need for monitoring and reporting of alerts related to this functionality presenting a significant residual risk, as identified by the Ministry. The Commission notes that any mobile workstation will be systematically encrypted as soon as it is installed, as follows to the note of October 1, 2020 from the Ministry of Justice National directive relating to the encryption of mobile office equipment. It also recalls the importance of ensuring the effectiveness of the encryption of the existing fleet. With regard to the pseudonymisation solution implemented and the hashing carried out, the Commission recommends applying the HMAC hashing function with a secret key or adding a salt before chopping the concatenated data concerned. The other security measures do not call for comments from the Commission. However, it recalls that the security requirements provided for in Articles 57 and 99 of the amended law of 6



January 1978 require the regular updating of the AIPD and its security measures with regard to the regular reassessment of the risks. The President M. -L. DENIS