

DELIBERATION n°2018-364 of 20 DECEMBER 2018National Commission for Computing and LibertiesNature of the deliberation: AuthorizationLegal status: In force Date of publication on Légifrance: Wednesday 27 March 2019Deliberation n° 2018-364 of 20 December 2018 on a single decision authorizing the National Federation of French Mutuals to implement automated processing for the purposes of research, study and evaluation requiring access to data from the generalist sample of beneficiaries (EGB), from the system medicalization program (PMSI) as well as data marts and data from the dashboards of the National Health Insurance Interregime Information System (SNIIRAM), components of the National Health Data System (SNDS) (Request No. 918106 )The National Commission for Computing and Liberties,Seizure by the National Federation of French Mutual Funds of a request for authorization of automated processing for research, study and evaluation purposes requiring access to data from the generalist sample of beneficiaries (EGB), from the program for the medicalization of information systems (PMSI) as well as to data marts and data from board of the national health insurance inter-scheme information system (SNIIRAM); 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 relating to the protection of individuals with regard to the processing of personal data and to the free movement of such data, and repealing Directive 95/46/EC; Having regard to the Social Security Code; Having regard to Law No. 78 -17 of January 6, 1978 amended relating to data processing, files and freedoms, in particular its articles 8-II-8°, 54, 61 and following; Having regard to law n° 2016-41 of January 26, 2016 on the modernization of our health system, in particular its article 193; Having regard to Decree No. 2016-1871 of December 26, 2016 relating to the processing of personal data referred to as the national health data system; ° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Having regard to the decree of March 22, 2017 relating to the security reference system applicable to the National Health Data System (SNDS); Having regard to the decree of July 19, 2013 relating to the implementation of the amended National Health Insurance Interregime Information System; Having regard to the opinion of the Expert Committee for research, studies and assessments in the field of health of March 20, 2018; After having heard Mrs Marie-France MAZARS, commissioner, in her report, and Mrs Nacima BELKACEM, government commissioner, in her observations, Makes the following observations: The National Commission for Computing and Liberties (hereinafter "the Commission") was seized on March 28, 2018 by the Fédération nationale de la mutualité française (hereinafter "the Federation"), acting as data controller, of a request for authorization to automated processing for research, study and evaluation purposes. These processing operations require

access to data from the generalist sample of beneficiaries (EGB), to datamarts and to data from the dashboards of the National Health Insurance Interregime Information System (SNIIRAM), components of the National Health Insurance Data System. health (SNDS). In addition, some processing requires access to data from the information systems medicalization program (PMSI) via the platform of the Technical Agency for Information on Hospitalization (ATIH). The National Federation of French Mutuals is a professional organization bringing together almost all mutuals which, for the exercise of its missions, carries out studies based on medico-administrative databases. To do this, it submitted to the Commission a request for authorization based on Article 54 of Law No. 78-17 of January 6, 1978 as amended (hereinafter "Data Protection Act"). These studies involve the annual implementation of around thirty data processing operations requiring access to data from the EGB, PMSI, data marts and data from the SNIIRAM dashboard. permission to process for research, study or evaluation purposes.

The Commission considered it appropriate, in the light of the information presented in the application file, to authorize the implementation of this processing on the basis of the provisions of Articles 54 IV and 61 et seq. of the "Informatique et Libertés" law, in under a single decision. On the application of the provisions related to the SNDS: Since the data from the EGB, the PMSI, the datamarts and the data from the SNIIRAM dashboards come from a component of the SNDS, the Commission recalls that all the legislative provisions and regulations relating to the SNDS is applicable. Furthermore, the Commission recalls the prohibition on using this data for the purposes described in Article L. 1461-1 V of the Public Health Code (hereinafter "the prohibited purposes"): the promotion of the products mentioned in II of article L. 5311-1 in the direction of health professionals or health establishments; the exclusion of guarantees from insurance contracts or the modification of contributions or insurance premiums of an individual or of a group of individuals presenting the same risk. Finally, the Commission recalls the obligation for the persons referred to in Article L.1461-3 II of the Public Health Code (the organizations mentioned in 1° of A and in 1°, 2°, 3°, 5° and 6° of B of I of Article L. 612-2 of the Monetary and Financial Code as well as the insurance intermediaries mentioned in Article L. 511-1 of insurance code) to: entrust the processing of data to a design office or research laboratory that has made a commitment to comply with the i standard including the criteria of confidentiality, expertise and independence, set by the decree of July 17, 2017; or to demonstrate that the methods of implementation of the processing make any use of the data for one of the prohibited purposes impossible. The Commission notes that, given its missions of representing mutuals, the Federation is not one of the persons referred to in Article L. 1461-3 II of the Public Health Code. On the legality of the processing: The Federation is a member of the National Union of Complementary Health

Insurance Organizations (hereinafter "UNOCAM"), whose composition and missions are provided for by the Social Security Code. It was set up to defend the collective, moral and material interests of the mutuals and unions that make it up, to ensure their representation before the public authorities and to facilitate the development of their activities. In order to have the expertise necessary to carry out its missions, the Federation carries out studies intended in particular to estimate the evolution of health expenditure. Given the missions of the data controller, the processing is necessary for the purposes of the legitimate interests that he pursues in this way and are, as such, lawful under Article 6 paragraph 1 point f) of the General Data Protection Regulation (hereinafter "GDPR"). On the purpose of the processing operations and their character in the public interest: The processing operations requiring access to the EGB, datamarts and SNIIRAM dashboards are intended to carry out studies of care pathways as well as the evolution health expenditure through: the ex-ante and ex-post assessment of the financial impact of regulatory measures; the ex-ante and ex-post assessment of the financial impact of contractual negotiations conducted by the Union Nationale des Caisses d' health insurance, health professionals and UNOCAM with a view to making proposals within the framework of decisions, consultations and negotiations with the public authorities; the study and monitoring of the cost of health insurance risk; the study and monitoring access to care as part of support for the development of mutual care and support services. In addition, the processing operations requiring access to PMSI data are intended to update the agreement of the Federation with hospital establishments (mutualist hospital agreement) and the performance of risk prevention studies related to the activity of mutualist health establishments. The Commission considers that the purpose of the processing is determined, explicit and legitimate, in accordance in Article 5 paragraph 1 point b) of the GDPR.

Furthermore, it considers that this processing, which is part of the tasks devolved to the Federation, has a purpose of public interest, in accordance with Article 54 I of the "computing and freedoms" law. On the categories of data processed: The Commission recalls that the data controller must only process, for each of the processing operations implemented within the framework of this single decision, the data that is strictly necessary and relevant with regard to the objectives of the processing. The data that can be consulted on the portal of the National Health Insurance Fund (hereinafter the "CNAM") in the context of this single decision are exclusively: EGB data; SNIIRAM datamarts; data SNIIRAM dashboards. In addition, data centralized and made available on ATIH's secure platform may also be processed, in particular on all files in the fields: medicine, surgery, obstetrics and odontology (MCO); follow-up and rehabilitation care (SSR); hospitalization at home (HAD). The chaining will be carried out by means of the "ANO" file. The processing operations included in the framework of the single

decision relate to the national data of the PMSI whose maximum historical depth is three years plus the current year. The adequacy, relevance and limited to what is necessary with regard to the purposes for which the data are processed, the geographical area concerned and the historical depth of the data consulted must be justified for each processing operation implemented within the framework of this decision. in the register of processing activities provided for in Article 30 of the GDPR. On the retention period of the data: No export of personal data can be carried out within the framework of this single decision. from SNIIRAM, the duration of access to data in the secure platform for the processing envisaged must be limited to the duration necessary to carry out the research, study or evaluation, and cannot exceed two years. With regard to PMSI data, the duration of access to the data in the secure platform must be limited to the duration necessary for the implementation of the processing. When the data controller justifies it, access to the data may be maintained at the end of the study, within the limit of two years from the last publication relating to the results. On the publication of the results: The Commission recalls that, in accordance with article 56 of the law "Informatique et Libertés", when the result of the data processing is made public, the direct or indirect identification of the persons concerned must be impossible. The results of the studies carried out within the framework of this single decision may be sent to employees of member mutuals of the federation as well as to the general public through the Place de la santé observatory. On the categories of data recipients: Only the controller has access to the data in the context of this single decision. It keeps up-to-date documents indicating the competent person(s) within it to issue the authorization to access the data, the list of persons authorized to access this data, their respective access profiles and the methods of attribution, authorization management and control. Only persons authorized by the data controller may have access to the data. These categories of persons are subject to professional secrecy under the conditions defined by Articles 226-13 and 226-14 of the Criminal Code. They must also undertake to comply with the rules of the security baseline implemented for the SNDS. The qualification of authorized persons and their access rights must be regularly reassessed, in accordance with the procedures described in the authorization procedure established by data controller. On information and the rights of individuals: The information of the individuals concerned, as to the possible reuse of their data and the procedures for exercising their rights, is ensured by a statement appearing on the website of the responsible for processing, health insurance organizations and on media allowing it to be brought to the attention of individuals, in particular posters in premises open to the public or documents given to them. The rights of access, rectification and opposition may be exercised with the director of the body managing the compulsory health insurance scheme to which the person is attached, in accordance with ent to the

provisions of Article R. 1461-9 of the Public Health Code. On data security and traceability of actions: The implementation of personal data processing occurring within the framework of the study s is carried out under the responsibility of the data controller, including with third parties acting on its behalf, in compliance with the provisions of Articles 24, 25, 28, 32 to 35 of the GDPR as well as the decree of March 22, 2017 relating to the security reference system applicable to the SNDS. With regard to data from SNIIRAM, the processing must be carried out within the CNAM's secure portal and must not provide for the constitution of a child system as defined in the decree of 22 March 2017 cited above. In addition, no cross-referencing of several potential identifiers, as defined by decree no. of the implementation of these treatments. With regard to PMSI data, ATIH makes the data available on a secure and approved platform within the meaning of the decree of March 22, 2017 relating to the security reference system applicable to the SNDS. It is based on a secure internet connection (HTTPS protocol) and strong authentication (one-time password generated by a token). Access traceability is ensured and a computer monitoring mechanism records all actions performed by the user. A workspace on the platform is provided by ATIH so that users can consult the data. Only aggregated statistics in such a way that the direct or indirect identification of people is impossible can be extracted from the platform. A copy of all data output is kept by ATIH, which reserves the right to report to the Commission if it becomes aware of information likely to reveal serious shortcomings. On the principle of transparency: The provision of data from the SNDS and its components is designed to account for their use to civil society. To this end, Article L. 1461-3 of the Public Health Code makes access to data from the SNDS and its components subject to the communication to the INDS of several elements by the data controller, before and after the studies. Thus, the data controller undertakes to register the studies carried out within the framework of this single decision with the public directory kept by the INDS. This registration, to be carried out by the data controller or the person acting on his behalf, before the start of the processing, is accompanied by the transmission to the INDS of a file comprising: the protocol, including the justification of the interest public, as well as a summary, according to the model made available by the INDS; the declaration of interests of the controller, in relation to the purpose of the processing. At the end of the studies, the method and the results obtained must be communicated to the INDS for publication. The recording of the processing and the transmission of the results are carried out in accordance with the methods defined by the INDS. In accordance with the recommendation of the Expert Committee for research, studies and evaluations in the field of health, the authorization will be limited to a period of three years. At the end of this period, a report containing in particular the list of analyzes carried out within the framework of the single decision as well as the methodology

followed within the framework of the analyzes must be sent to the Commission. Authorizes, with regard to the number of processing operations made necessary by its activity, the National Federation of French Mutuals to implement the processing mentioned above for a period of three years, with the obligation to submit a report to the Commission at the end of this period.

The President I.FALQUE-PIERROTIN