

Deliberation 2021-082 of July 15, 2021 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Friday March 25, 2022 Deliberation n° 2021-082 of July 15, 2021 providing an opinion on a draft decree authorizing the implementation of a processing of personal data called "Inclusive course booklet" LPI (request for opinion no. 21010453) The National Commission for Computing and Liberties, Seized by the Ministry of National Education, Youth and Sports of a request for an opinion concerning the implementation of a processing of personal data called "Inclusive course booklet" LPI; Having regard to Regulation (EU) 2016/679 of the Parliament 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 Regulation General on Data Protection); Having regard to law n° 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms, in particular its articles 6-III and 31; Having regard to law n° 2019-791 of July 26, 2019 for a "school trust"; Having regard to the Education Code, in particular its article L. 111-1; After hearing the report of Mr. Alain DRU, commissioner, and the observations of Mr. Benjamin TOUZANNE, government commissioner, Issues the following opinion: The draft decree in Council of State submitted for opinion on June 1, 2021 aims to authorize the implementation of a processing of personal data called "Inclusive course booklet" (hereinafter "LPI"). This application, implemented by the Ministry of National Education, Youth and Sports on the basis of its public interest mission, within the meaning of the General Data Protection Regulation (GDPR), must participate in the "inclusive school public service". Its purpose is to improve the care and schooling of students with special educational needs, to better individualize educational responses and to guarantee families the implementation of educational adaptations as soon as learning difficulties are identified. The LPI should thus allow the personnel concerned, and the families who agree to use it, to consult in real time the educational monitoring set up for a pupil with special educational needs. In accordance with circular n° 2019-088 of June 5, 2019, the LPI must in particular make it possible to pool the information collected by all the actors involved in the already existing systems, such as the personalized program for educational success (PPRE), the personalized support plan (PAP), the individualized support (PAI) or even the personal schooling project (PPS), for pupils with special educational needs, from kindergarten to high school, public and private establishments under contract in metropolitan France and departments and regions of overseas. The Commission notes that, according to the Ministry, approximately 840,000 students, mostly minors, are likely to be affected by the LPI, in which many health data will be processed, considered as sensitive data by the GDPR, including raises the treatment. The Commission therefore considers, and given the specific

protection that must surround the personal data of minors according to recital 38 of the GDPR, that substantial guarantees, particularly in terms of security, must govern the implementation of the processing. . Under these conditions, the draft decree calls for the following observations. On the purposes of the application and the setting up of the teleservice As a preliminary point, the Commission notes that the LPI is not intended to replace the programs, plans and projects already existing and mentioned above, and that the objective assigned to the application is to be able to improve these various devices by means of a computer application. With regard firstly to the purpose consisting in "allowing legal guardians to consult, by means of a teleservice, information relating to the schooling of their child and to extract the data which are useful to them" provided for in 5 ° of article 1 of the draft decree, the Commission takes note of the clarifications of the ministry according to which the teleservice, based on the mission of public interest of the ministry, will not be made compulsory and that it is planned, for people concerned not wishing or not being able to use the teleservice, a paper extraction of all the constituent elements of the file. In accordance with its doctrine on teleservices, the Commission considers that the simplification of administrative procedures constitutes a legitimate aim, and considers that the setting up of teleservices must be surrounded by means making it possible to meet the specific support needs of users (implementation provision of computer equipment, support by agents, etc.). In the present case and taking into account in particular the purpose, the sensitivity of the data processed and the number of people concerned by the LPI, the Commission welcomes these elements and invites the Ministry to include, in the draft decree or minima in the information provided to persons, this optional nature and the possibility of obtaining, where applicable, a paper extraction of the elements of the file. In addition, the Commission points out that the teleservice should comply with the general accessibility guidelines for administrations (RGAA). Secondly, the ministry specified that the LPI is intended to be interconnected with several information systems, both internal and external to the ministry, and that it must in particular allow automated exchanges with the information systems departmental centers for people with disabilities (MDPH), in particular for PPS, in order to allow MDPH professionals to consult the guide for evaluating compensation needs in terms of schooling (GEVA-Sco 1st request) and to transfer the decisions of the Commission for the Rights and Autonomy of Persons with Disabilities to the LPI. The Commission also notes that the government intends to mention the interconnection of the LPI with the information systems of the MDPHs under the purposes of the processing and recalls that, although it may be mentioned in the decree, this interconnection does not constitute not a purpose as such but must fall within the purposes indicated in article 1 of the draft decree or lead to the addition of a specific purpose. The Commission considers that the

authorized agents of the MDPH should therefore be among the recipients of personal data mentioned in Article 3 of the draft decree, and not as accessors to this data. Thirdly, with regard to the purpose of "providing appropriate educational responses according to the student's identified needs by referring to a database of adjustments and adaptations included in the application" provided for in 1 ° of article 1 of the draft decree, the Commission takes note of the details of the ministry according to which the objective is to offer on a single tool all the possibilities of educational support for pupils with special educational needs, and that no data of a personal nature will be contained in this database. The Commission also notes, with regard to the proposal for an educational response made to the family of the pupil concerned, that the texts require the agreement of the pupil or of his legal guardians if the pupil is a minor before the placement in place of a plan, project or programme. With regard, fourthly, to the purpose of "pooling in a single document all the information concerning the situation of a pupil with special educational needs" provided for in 3° of Article 1 of the draft decree, the Commission takes note of the Ministry's clarifications that, at present, the information is provided in a paper document specific to each device, that there are as many documents as devices put in place for the student, and that the information must be re-entered each time the device is renewed and/or changed. On the scope of the pupils concerned by the device Article 1 of the draft decree targets "pupils with special educational needs" and "learning difficulties" . The same article specifies that the processing must, in particular, make it possible "to simplify the procedures for information and editing of plans and projects, in particular PPRE, PAP, PAI and PPS". The Ministry specified in this respect that the LPI only concerns pupils with special educational needs who, according to the teaching team, require the implementation of educational adaptations and arrangements, since the pupils' legal guardians have gave their consent to this implementation. He also indicated that it was necessary to create an LPI file in order to investigate the file and to proceed with requests for advice and agreement before the finalization of the plans, projects and programs raised. In order to clarify the scope of the persons concerned by the system, the Commission considers that the draft decree should refer to an order exhaustively listing the documents and plans, projects and programs falling within the scope of the LPI, in order to include in particular the guide assessment of schooling compensation needs (Geva-Sco). The Commission considers that the scope of the pupils concerned by the LPI should come out more clearly from the draft decree, so that it is clarified that these are pupils for whom one or more measures among those mentioned above. On the categories of dataIn the first place, article 2 of the draft decree specifies, in accordance with article 35.3° of the law of January 6, 1978 as amended, the categories of data recorded in the processing. The Ministry has, in accordance with Article 33. I-4° of the aforementioned

law, annexed to its request for an opinion the list of data contained in the processing. The Commission recommends, given the issues related to this processing, the number and quality of the persons concerned, that this much more precise list of data appear directly in the decree or be appended to the decree or in another regulatory text (for example example a decree), and in any event is easily accessible, for example on the ministry's website. Secondly, with regard to the data relating to health contained in the LPI, the Commission observes that the following data may be contained:" - medical and paramedical documents; - psychological assessments provided by the family; - adjustments and adaptations made work (selection from an adaptation database or free entry); - information relating to support and care (types of care, location) outside the establishment (including a free field); - information (type, date of beginning and end) relating to the plans or projects implemented such as the PPRE, the PAP and the implementation of the PPS; - information relating to the student's project as part of the first request for the evaluation guide of compensation needs in terms of schooling (GEVA-Sco 1st request) provided by the pupil and his legal representatives (contains a free field); - opinion of the school doctor within the framework of the PAP; - school and extracurricular timetable of the student with any adjustments as part of the GEVA-Sco 1st request; - information on the adapted educational material made available to the student (auditory, visual, computer); - elements of educational evaluation concerning the points of support and difficulties of the student informed within the framework of the PPRE, the PAP, PAI or GEVA-Sco 1st request. "The Ministry has indicated that only the information necessary for the development of educational adaptations and arrangements will be provided according to the needs of the student and the system from which he will benefit. Thus, for the PPRE, no data relating to the state of health is not requested. More generally, with regard to "free fields", the Commission invites the Ministry to systematically display an awareness message to people filling in these areas to draw their attention to the necessary respect for the principle of minimization Thirdly, article 2, 1-a) of the draft decree also states that the identification data in the LPI will contain both the national student identifier (INE) and the student number. The Ministry clarified in this regard that it was indeed a question of creating a new unique identifier, that the INE number was only processed in the LPI for the purpose of interconnection between the different systems. information from the ministry and that the LPI number will allow students to be identified between the ministry and the MDPH information system. The Commission considers on the one hand that the planned use of the INE number is legitimate and in accordance with the decree of 16 February 2012 creating a process called "national directory of pupil, student and apprentice identifiers". On the other hand, it welcomes the creation of this specific identifier, and considers that the creation and use of this LPI number will make it

possible, in accordance with its doctrine, to segment processing in order to avoid interconnections or reconciliations of data which are not necessary, and to limit the risks of re-identification of persons in the event of a data leak. It therefore calls on the ministry to limit the exchange of personal data as much as possible. On the rights of individuals

Firstly, the Commission notes, with regard to the right to information, that the Ministry specified that, before the implementation of the teleservice planned for the start of the 2021 school year, the teacher or teachers of the student will deliver by hand to the legal guardians of the minor student or the adult student, as soon as a file is created in the LPI, a document specifying the rights held under articles 15, 16, 18 and 21 of the GDPR. In this respect, the Commission considers on the one hand that the information provided must be complete and include all the information provided for in Article 13 and, where applicable, Article 14 of the GDPR. The Commission also considers that, in accordance with Article 12.1 of the GDPR and given that a large number of persons concerned by the LPI will be minors, appropriate information should be sent to them. Once the teleservice has been implemented, the Commission considers that this information must, in addition to the notices present in the teleservice for the people who will connect to it, be provided to the minors concerned, in accordance with Articles 13 and 14 of the GDPR. The Commission recalls that the information must not only be provided to the users of the teleservice but to all the persons concerned by the LPI. In this regard, the Commission invites the Ministry to study the possibilities of giving minor students easy access to information concerning them, for example by offering minor students who so request the creation of an account to access the online service. Secondly, with regard to the connections made in the LPI, the Ministry specified that the persons concerned would, in accordance with Article 14 of the GDPR, be informed of the source of the data in the event of indirect collection. In view of the number of people affected by the processing and the status of most of them as minors, the Commission considers that information clarifying the various connections made and specifically the connection with the IS MDPH, could usefully be provided to data subjects, for example via an infographic available on the ministry's website. erasure does not apply to the LPI and considers that this exclusion should appear in the draft decree, otherwise this right would apply. The Commission recalls that the exclusion of the right to erasure, based on the need for processing to perform a task in the public interest, must serve the sole purposes provided for in Article 1 of the draft decree. Fourthly, the Commission notes that the right of opposition is provided for in Article 5 of the draft decree. She is surprised that this right is maintained, while the instruction and the follow-up of a possible measure can only be done, according to the indications provided by the ministry, by processing the personal data governed by the draft decree. It therefore invites the Ministry to reflect on the need to exclude or

adjust the right of opposition in accordance with Article 23 of the GDPR, insofar as it is an accompaniment accepted by the legal representatives of the pupil or the latter if he is an adult. On retention periods Firstly, article 4 of the draft decree provides that data relating to pupils are kept in an active database "for the duration of the pupil's schooling within the limit of three years after the last action on the booklet or at the latest until the end of the calendar year following the pupil's exit from the school system". The Commission notes that this extension of time linked to an action within the limit of three years, without the type of action carried out on the LPI being defined, could lead to the retention of all the data over an extended period of time, for example until the end of schooling, on the grounds, for example, that the LPI was simply consulted by the pupil's parents once every three years. As such, it considers, for example, that a request for rectification made by the person concerned cannot constitute an action having the consequence of extending the retention period of the data recorded in the booklet. In this respect, the Commission considers that a reassessment at the end of each school cycle should take place in order to prevent data, in particular health data, which can be consulted by all the players listed in the decree, from being kept in an active database for a duration that is not necessary with regard to the purposes pursued. Secondly, the ministry specified that it would be necessary to create an LPI in order to examine the file for each pupil identified as having special educational needs before the finalization of the plans, projects and programs and that if none of the mechanisms was eventually implemented, the student's LPI record would be deleted. The Commission considers that the draft decree should be amended to specify that in this case, the data will be deleted within a reasonable period which cannot exceed six months. On accessors and recipients Firstly, the ministry specified that for the PAP, the medical and paramedical documents are communicated by the family to the national education doctor who alone has access to this information and for the PAI, the health data are only communicated to the national education doctor. The Commission notes that according to the transmitted subcontract, the subcontractor will also have access to this data. The Commission considers that these details should be included in the draft decree as well as in the information provided to the persons concerned. Secondly, Article 3-II of the draft decree provides that the recipients of all or part of the personal data recorded in the processing may be, in particular, "authorized personnel of the central administration (...)". In this regard, the ministry specified that the general directorate of school affairs (DGESCO) and the digital directorate for education (DNE) were concerned by anonymized data for management purposes, and the evaluation directorate, foresight and performance (DEPP) for processing for statistical purposes. Given that the recipients of anonymized data are not intended to appear in the draft decree, the Commission considers that the latter should be amended to mention, with regard to recipients

of the central administration, that the DEPP authorized personnel. Subject to these reservations, the list of other recipients and that of buyers do not call for any comments from the Commission.

On security measures and traceability

Firstly, the Commission, which notes that the impact assessment relating to data protection (AIPD) transmitted by the ministry is not finalized, recalls that, given the characteristics of the processing, this AIPD must be completed and carried out before the implementation of the processing. The Commission, which received the DPIA which was not finalized too late to examine it, also recalls that this DPIA must in particular enable the Ministry to verify that the planned security measures comply with Articles 5.1-f) and 32 of the GDPR. In this regard, the Commission takes note of the Ministry's choice to use an approved health data host. Secondly, the Commission points out that security measures of an equivalent level must also be implemented for paper extractions which would be made at the request of data subjects who cannot or do not wish to access the teleservice.

of the traceability of the actions carried out in the processing, the Commission notes that Article 4 of the draft decree provides that "The connection logs and the access history are deleted at the end of a period of 12 months". The Commission recalls that traceability measures constitute one of the important guarantees making it possible to limit and detect any misuse of processing, in order to reduce the risks for the persons concerned. If the retention period of this data does not call for any particular comment, the Commission invites the Ministry to set up mechanisms for the automatic analysis of traceability data in order to detect as soon as possible any misuse of processing.

subcontracting and data hosting

The subcontract concluded between the Ministry and the National Solidarity Fund for Autonomy provides, in article 3.5, that "The parties acknowledge that the performance of the services according to the terms envisaged by the CNSA does not involve international transfers of personal data" and that "any transfer of personal data outside the European Union can only take place after written authorization from the Ministry (...) and in accordance to the provisions of Articles 44, 45 and 46 of the GDPR". In this regard, the Ministry indicated that no transfer outside the European Union was planned. Given the data processed, the minority of a large number of people affected by the processing, the framework they are collected and Recital 38 of the GDPR which states that "Children deserve specific protection with regard to their personal data because they may be less aware of the risks, consequences and safeguards concerned and of their related rights to the processing of personal data", the Commission considers that the outsourcing contract should provide for the prohibition of transferring the data outside the European Union.

With regard to subsequent outsourcing, with regard to the particular sensitivity of the data processed via the LPI and the vulnerable nature of a large part of the persons concerned by the processing, the Commission further considers that data of a

personnel should be entrusted to an operator who stores them on the territory of the European Union and who is exclusively subject to European law. President Marie-Laure DENIS