

Deliberation 2020-022 of February 6, 2020 National Commission for Computing and Liberties Nature of the deliberation:

Opinion Legal status: In force Date of publication on Légifrance: Saturday July 11, 2020 Deliberation n° 2020-022 of February 6, 2020 providing an opinion on the production and analysis of the results of a statistical survey on socio-demographic changes in the overseas departments and regions called "Migrations, Family, Aging" (MFV-2) (request for opinion no. 2215756)

The National Commission for Computing and Liberties, Request by the National Institute for Demographic Studies (INED) of a request for an opinion relating to the carrying out and analysis of the results of a statistical survey on socio-demographic changes in the overseas departments and regions called Migrations, Family, Aging (MFV-2); Having regard to Convention No. 108 of the Council of Europe for the protection of individuals with regard to automatic processing of data of a personal nature; 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; Having regard to Law No. 51-711 of 7 June 1951 as amended relating to the obligation, coordination and secrecy in the field of statistics; Having regard to Law No. 78-17 of 6 January 1978 amended relating to computers, files and ux freedoms, in particular its article 44-6°; Having regard to decree n° 2009-318 of March 20, 2009 relating to the National Council for Statistical Information, to the Statistical Confidentiality Committee and to the Official Statistics Label Committee; 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, files and freedoms; Having regard to deliberation n° 2009-497 of September 17 2009 authorizing the National Institute for Demographic Studies (INED) to implement the automated processing of personal data necessary to carry out and analyze the results of a statistical survey on socio-demographic changes in the departments of Overseas referred to as Migration, Family, Aging (MFV); Having regard to deliberation n° 2015-309 of September 10, 2015 authorizing the National Institute for Demographic Studies (INED) to implement automated processing of personal data having for purpose és the realization and the analysis of the results of statistical investigation relating to the socio-demographic changes in the overseas department of Mayotte called Migration, Family, Aging (MFV Mayotte); Considering the deliberation n ° 2017-012 of January 19 2017 adopting a recommendation on passwords; On the proposal of Ms Anne DEBET, commissioner, and after having heard the observations of Ms Nacima BELKACEM, government commissioner, Issues the following opinion: The Commission notes that the project of survey referred to it, which is a continuation of the Migration, Family and Aging survey conducted in 2009 (MFV) on which it

has already expressed an opinion, aims mainly to highlight the developments that have occurred since, assess the impact in terms of public policies and measure their effects on economic and social life by highlighting the specificities of each of the territories studied. In this context, the planned processing continues it for public statistics and research purposes. In this respect, it considers that the processing falls within the scope of Regulation (EU) 2016/679 of 27 April 2016 referred to above (hereinafter the GDPR) and notes that INED intends to rely on the legal basis of the execution of a mission of public interest mentioned in article e) of 1) of article 6 of the GDPR. Insofar as it relates to sensitive data within the meaning of the regulations, the planned processing must be the subject of a prior opinion from the Commission in accordance with the provisions of Article 44-6° of the law of 6 January 1978 as amended, without prejudice to the obligation to formalise, where applicable, the creation of the processing by a specific regulatory act. It recalls that it must be kept informed and seized of any substantial modification affecting the characteristics of the processing, the impact analysis relating to data protection (DPIA) transmitted having to be updated.

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On the general context of carrying out the MFV2 survey The Commission notes that the draft survey concerns a sample drawn up to obtain a total of approximately 13,000 respondents (3,000 respectively in Guadeloupe, Reunion and Martinique as well as 4,000 in Guyana) in order to collect data from January 8, 2020 and until December 2021. The data collection thus carried out must allow the analysis and measurement of socio-demographic changes in each of the aforementioned communities and, more particularly, the scale and characteristics of migration, the evolution of family structures, changes in fertility behavior, the place and future prospects of youth, the importance of social insecurity or even the evolution of traditional forms of solidarity in connection with the aging of the population.

economic studies (INSEE) based on data collected during the annual census surveys (EAR) is broken down into three waves for the Antilles and Réunion and four for Guyana. The draw of the first wave will be carried out in the 2014-2018 EAR cycle, that of the second and third waves in the 2015-2019 cycle and the fourth wave in the 2016-2020 cycle (subject to the production of census images associated with the EAR 2020).

nearest anniversary date method. including taking charge of sample selection and data collection. In this regard, it notes that an agreement was concluded between INED and INSEE on 6 December 2019, defining the respective responsibilities and obligations of these players, in accordance with the provisions of Article 28 of the GDPR. The Commission takes also note the details provided by INED that INSEE, involved in carrying out this survey as a subcontractor, has waived all rights to the data and will not process them for statistical purposes. besides that the survey will be carried out face to face by INSEE investigators using a computer tool enabling data to be entered in real time. Finally, the Commission observes that the

draft survey has received the opinion of conformity of the Official Statistics Label Committee on September 27, 2019 allowing, by delegation of the National Council for Statistical Information (CNIS), the awarding of the label of general interest and statistical quality. This survey project is by somewhere else registered in the program of statistical surveys of public services and other services producing statistical information for 2020, as approved by the decree of October 24, 2019 of the Minister of Economy and Finance. He received the visa of the Minister of Economy and Finance in accordance with article 2 of the law n° 51-711 of June 7, 1951 referred to above and was seen conferring on this occasion the character of compulsory investigation.

the main survey project among people aged 18 to 79 living in an ordinary household in the four DROMs (La Réunion, Guadeloupe, Martinique and Guyana) distinguishing between people native to the DROMs, including returnees (people native to the department having lived outside before settling there again), and immigrants (people born outside the department who settled there), it is planned that qualitative post-surveys, excluded from this request for an opinion, can be carried out . These will be carried out with the people surveyed who have given their consent and, if they consent, with adult children of native people interviewed during the survey residing outside the department. On the purposes of the processing The Commission notes that the survey project aims to enable the production of statistical analyzes and publications by the data controller, as well as the provision of indirectly identifying data to the scientific community with a view to their reuse for scientific research purposes. note of the details according to which these purposes must make it possible to meet the public needs for a renewal of knowledge on the importance and the speed of the socio-demographic changes in progress in the places concerned. The Commission considers that the purposes pursued by the planned processing are determined , explicit and legitimate, in accordance with the provisions of b) of 1) of article 5 of the GDPR. On the nature of the data processed The Commission observes that the purposes pursued involve the collection of numerous personal data of a very varied nature from the persons surveyed, some of which fall within the category of so-called sensitive data within the meaning of Article 9 of the GDPR.

GDPR. The questionnaire thus includes ten modules on the children of the person surveyed and of their spouse, their current union and past unions, the control and future of fertility, the social and professional trajectory, a separate module depending on whether the person surveyed is a native of the department or an immigrant, the experiences of rejection or discrimination in the department, the extended family, solidarity and assistance, the state of health and access to care and languages and religion. The Commission recalls that, in decision no. 2007-557 DC of November 15, 2007, the Constitutional Council ruled that while the processing necessary to conduct studies on measuring the diversity of people's origins, discrimination and integration can

relate to objective data, they cannot, without disregarding the principle set out in Article 1 of the Constitution, be based on ethnic origin or race. primarily to collect objective data, is not based on the ethnic or alleged racial origin of the respondents. While some questions, such as those relating to experiences of discrimination, involve the collection of subjective data, the Commission considers that this survey is not intended, even indirectly, to classify respondents according to either their ethnic origin or allegedly declared racial identity, or from an ethno-racial frame of reference. Under these conditions, it considers that the questions asked are not contrary to the aforementioned decision of the Constitutional Council. mobilize the exception provided for in Article

44-2° of the law of 6 January 1978 amended to process sensitive data for statistical purposes within the framework of MFV2. It thus recalls that INED falls within the framework of the provisions of Article 44-6° of this same law allowing it to process sensitive data for processing necessary for public research, provided that reasons of interest important public make them necessary. On the rights of individuals Firstly, the Commission recalls that in accordance with the provisions of Article 12 of the GDPR, the controller is required to take appropriate measures to provide data subjects with information on the processing and their rights in a concise, transparent, understandable and easily accessible manner, in clear and simple terms. . It notes that a letter-notice written in French must be sent by post to the home of the person to be questioned, that the investigators are required to ensure that the letter-notice has been received and that they are in ability to provide a copy before starting data collection if necessary. However, the Commission requests that the notification letters be completed in order to include all the information listed in Article 13 of the GDPR. In particular, it invites INED to explicitly mention the legal basis of the processing and to indicate that pseudonymised responses will be made available to researchers outside INED. The Commission also invites clarification of the information on the retention periods for personal data in order to indicate, on the one hand, that the personal data necessary for carrying out qualitative post-surveys will be kept until the end of the year 2023 and, on the other hand, to indicate that the responses will be kept in pseudonymised form for a period of five years from the last valuation, itself scheduled within four years of the end of the collection. The postal address for contacting INED's data protection officer by post must also be changed to take account of INED's change of address. notice will inform individuals of their rights of access, rectification, erasure and limitation for data concerning them, which they may exercise with INED during the retention period of data allowing their direct identification. At the end of the data pseudonymization process, the same procedures will be applied to respond to requests to exercise these rights only if it is possible to find the data subject in the file from the information he

has provided. Furthermore, it invites the INED to take appropriate measures to ensure that the non-French-speaking respondents actually received this information at the latest when it was collected. Secondly, the Commission notes that the draft The survey plans to ask respondents if they agree to provide the contact details of their adult children (telephone number and e-mail address) when the latter live outside the department. These details should make it possible to subsequently contact these children in order to suggest that they take part in an optional additional survey on their vision of their future and that of their department of origin and, more particularly, on their possible return to the country as well as the conditions of it and the support, or even the care, of their aging parents and the related organizational methods. It therefore recalls that specific information must be communicated, under the conditions provided for by Article GDPR, to adult children whose data has been collected. In this respect, while the Commission takes note of the clarifications provided by INED according to which the provision of this information within the period of one month provided for by the GDPR causes technical difficulties, it recalls that, in the absence of being able to justify the impossibility of providing this information or the disproportionate effort that this would entail, INED remains under the obligation to contact the adult children concerned in order to provide them with the required information and obtain their consent to participate in an optional additional survey. .Thirdly, the Commission notes that, given the mandatory nature of the survey, people will be required to respond to it accurately and within the time limits set in accordance with the provisions of Article 3 of Law No. 51- 711 of 7 June 1951 referred to above. It recalls in this respect that if, in accordance with article 21-6 of the GDPR, the persons concerned cannot oppose the collection of their data for the processing necessary for the performance of a task in the public interest and pursuing in particular the purposes of scientific research and statistics, such derogation from the right of opposition must however be accompanied by guarantees for the rights and freedoms of individuals in accordance with the provisions of article 89-2 of the GDPR. embarrassment, particularly for the module on religious practice. She nevertheless considers that the questionnaire could be modified in order to also indicate the possibility of non-response in the formulation of any question likely to reveal the state of health, the existence of an application for asylum or the status of refugee or family member of a person recognized as a refugee, insofar as it results from the elements transmitted that the refusal to answer or a fictitious value may be entered, including in cases where the terms not concerned, do not know, do not wish to answer or refusal are not proposed. On the recipients of the data The Commission notes that the INED is the exclusive custodian of all the survey files which will be accessible to its research teams authorized to use the results. At the end of a period of three months following the end of the collection of the data, a pseudonymised raw

file comprising all the information collected during the survey, including indirectly nominative information, will be delivered by INSEE by secure digital transfer. The Commission notes that this file does not contain any directly nominative variable such as the names of respondents and interviewers or the address of the dwellings surveyed. It is from this file of raw data supplemented with provisional weightings that the processing will be carried out which will serve as the basis for the first publications by INED with the collaboration of INSEE. It is then planned that a study file corresponding to the pseudonymised raw file comprising, with the exception of the surnames and addresses of the respondents, the data resulting from the survey enriched with new study variables, adjusted and final weights, or made available to researchers not belonging to the contracting authority from the Secure Data Access Center (CASD). The Commission also notes that a pseudonymised production and research file integrating data from the study file with, according to INED, a lower risk of identification, will be accessible to researchers not belonging to the contracting authority who have signed an individual confidentiality agreement via the Quetelet PROGEDO network at the end of 2022. It recalls that the conditions of access to non-anonymised individual data, appearing in the questionnaires of the statistical surveys of the public services and relating to the life and family and, in general, to facts and behavior of a private nature are provided for by article 6 of law n° 51-711 of 7 June 1951 as amended, as well as by article 17 of decree n° 2009-318 of March 20, 2009 referred to above. These data cannot be the subject of any communication on the part of the depository services before the expiry of a period of seventy-five years following the date of carrying out the survey or a period of twenty-five years from the date of the death of the person concerned, if this last period is shorter, except for a decision of the archives administration, taken after consulting the statistical confidentiality committee and relating to a request made for the purposes of official statistics or scientific research or history. It notes that the procedures for accessing said data via the CASD and the Quêtelet PROGEDO network comply with the legal provisions applicable to official statistics. directly identifying people who gave their consent during the MFV2 survey to be recontacted as part of the qualitative post-surveys, will be kept by INSEE until the end of 2023 at the latest. data will, in any case, be deleted at the end of this period. It takes note of the clarifications provided by INED according to which the personal data of people who refused to participate in the qualitative post-surveys will be deleted within four months of the end of the collection. Secondly, the Commission notes that, taking into account the time necessary for their use by the data controller, the raw file comprising the raw data from the collection, from which the surnames and addresses of the respondents are subtracted, as well as the study file mentioned above, will be kept for five years from the last valuation. The last planned

exploitation consists of the publication of a work four years after the collection. At the end of this period, the original files will be transferred to the National Archives while a copy of these files will be kept by INED on a secure server. access to which is restricted to the head of the survey department and the scientific manager of the survey. processing must be kept in a form allowing the identification of the persons concerned for a period not exceeding that necessary for the purposes for which they are processed. It further recalls that if personal data may be stored for longer periods insofar as they will be processed exclusively for scientific research purposes or for statistical purposes, such storage must be accompanied by the implementation appropriate technical and organizational measures in order to guarantee the rights and freedoms of individuals. will be set up to access it. However, it considers that INED should keep survey data indefinitely only insofar as they are otherwise anonymized. Otherwise, INED will have to determine a retention period for the data in the active database, at the end of which it will transfer this data to the National Archives, in accordance with the provisions of the Heritage Code. This retention period, which would not necessarily be encrypted, could correspond to the occurrence of a specific event such as the renewal of survey data. On data security and traceability of actions Concerning the control of logical access, the Commission notes that authorization profiles are planned in order to manage access to the data stored in the INED servers as needed. Authorizations are managed and distributed only by members of the INED IT department, according to requests from the survey manager. It recalls that access permissions must be granted for a fixed and limited period, after hierarchical validation, that they must be deleted as soon as a user is no longer authorized and that an overall review of the authorizations granted must be carried out. regularly throughout data collection and the production of statistical studies. The Commission notes that access to INED servers is controlled by a username and password. In this regard, it recalls the importance of ensuring that the passwords used meet the characteristics mentioned in the context of deliberation no. 2017-012 of January 19, 2017 adopting a recommendation relating to passwords. Concerning encryption, the Commission takes note that data exchanges are carried out via encrypted communication channels and ensuring the authentication of the source and the recipient. daily and automated back-up on the servers, involving the back-up of the processing data. With regard to traceability, the Commission notes that a procedure for logging access to the applications is implemented within the INED servers. Given the nature of the personal data, it considers it necessary to include in the logs the reference of the data accessed. The Commission also recalls that the logging procedure must guarantee that the traces are not altered. Under these conditions, the Commission considers the security measures described by the data controller to comply with the security requirement provided for in Article 32 GDPR.

However, it recalls that this obligation requires the updating of security measures with regard to the regular reassessment of risks. In this respect, the Commission recalls that specific attention should be paid to the reassessment of security measures as part of the regular update of the impact assessment. For the President

Deputy Vice-President Sophie LAMBREMON