

Deliberation 2023-006 of January 19, 2023 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Thursday May 18, 2023 NOR: CNIX2304806X Deliberation no. draft decree amending 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 and decree no. 2020-1690 of December 25, 2020 authorizing the creation of personal data processing relating to vaccinations against covid-19 Date of the opinion: January 19, 2023 No. of the deliberation: 2023-006 N ° request for an opinion: 22019047 Texts concerned: Draft decree amending 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 and decree no. 2020-1690 of December 25, 2020 authorizing the creation of personal data processing relating to vaccinations against covid-19 Themes: SI-DEP, Vaccine- covid Basis of the referral: article 8.I.4°-a) of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms and article 11.V of law n° 2020- 546 of May 11, 2020 extending the state of health emergency and supplementing its amended provisions fight against the covid-19 epidemic. A modification of the texts authorizing the processing implemented so far is therefore necessary. The CNIL proposes to clarify the project concerning, in particular, the procedures for exercising the rights of individuals according to the different purposes pursued by the processing implemented. Texts concerned: draft decree amending 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 and Decree No. 2020-1690 of December 25, 2020 authorizing the creation of personal data processing relating to vaccinations against covid-19.

Topics: SI-DEP, Vaccine-covid.

Basis of the referral: article 8.I.4°-a) of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms and article 11.V of law n° 2020- 546 of May 11, 2020 extending the state of health emergency and supplementing its amended provisions.

The essential :

In view of the evolution of the health situation, the law of July 30, 2022 puts an end to the exceptional regimes created for the purposes of the fight against the covid-19 epidemic. A modification of the texts authorizing the processing implemented until now is therefore necessary.

The CNIL proposes to clarify the project concerning, in particular, the procedures for exercising the rights of individuals according to the different purposes pursued by the processing implemented. The National Commission for Computing and Liberties,

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 (GDPR);

Having regard to law n° 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms (data-processing law and freedoms);

Having regard to law n° 2020-546 of May 11, 2020 as amended extending the state of health emergency and supplementing its provisions, in particular its article 11;

Having regard to law n° 2022-1089 of July 30, 2022 putting an end to the exceptional regimes created to fight against the epidemic linked to covid-19, in particular its article 2; On the proposal of Mrs Valérie PEUGEOT, commissioner, and after having heard the observations of Mr. Benjamin TOUZANNE, Government Commissioner,

Adopts the following resolution: I. The referralA. The contextArticle 2 of law n° 2022-1089 of July 30, 2022 puts an end to the exceptional regimes created to fight against the epidemic linked to covid-19: from February 1, 2023 and until June 30 2023, the Contact Covid information system, SI-DEP and those implemented by the regional health agencies (ARS) with a view to combating the covid-19 epidemic can only be implemented at purposes:- to identify infected persons;

- issuance of proof of absence of contamination or a certificate of recovery;

- epidemiological surveillance at national and local level, as well as research on the virus and the means of combating its spread. This article specifies that personal data may only be processed for the first two purposes with the consent of the persons concerned. With regard to epidemiological surveillance, as well as research on the virus and the means of combating its spread, these treatments may be implemented in the event of the collection of information .B. The subject of the referralThe

National Commission for Computing and Liberties (CNIL) was seized by the Minister of Health and Prevention, urgently, on December 28, 2022, then on January 17, 2023 within the framework of an amending referral, of a draft decree amending 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 health emergency and supplementing its provisions and Decree No. 2020-1690 of December 25,

2020 authorizing the creation of personal data processing relating to vaccinations against covid-19.

Firstly, the draft decree aims to draw the consequences of the state of the law which will come into force on February 1, 2023, by modifying the aforementioned decree of May 12, 2020 in order to: - repeal the provisions relating to Contact Covid - this processing no longer intended to be supplied;

- concerning the SI-DEP treatment:

- to modify its purposes, the list of data processed, their recipients, as well as their retention period in order to adapt the conditions for implementing this processing;

- to modify the procedures for exercising the rights of the persons concerned to take into account the condition of consent to the sharing of their data for the purpose of centralizing the results of screening examinations and issuing proof of absence of contamination or a certificate of reinstatement;

- to modify the purposes for which the ARS can implement data processing in the context of the fight against covid-19, the list of data thus processed, their recipients and their retention period, in order to adapt the conditions implementation of this processing. Secondly, the draft decree aims to modify decree no. 2020-1690 of December 25, 2020 authorizing the creation of a processing of personal data relating to vaccinations against covid -19. In this regard, the project modifies the list of data processed in the Covid Vaccine information system, by adding the unique vaccination certificate identifier of the persons concerned. The draft decree also removes any reference to the health pass and to Contact Covid .II. The opinion of the CNILA. On the right of opposition The draft decree provides for the modification of articles 13 and 14-4 of the decree of May 12, 2020, devoted to the procedures for exercising the rights of the persons concerned.

With regard to SI-DEP processing, 8° of article 1 of the draft decree draws the consequences of the addition of the condition of consent by guaranteeing the right of opposition of the persons concerned.

This right is excluded for the purpose of epidemiological surveillance at national and local levels, as well as research on the virus and the means of combating its spread, except for what concerns, in terms of research, the transmission of data to the group of public interest mentioned in Article L. 1462-1 of the Public Health Code and to the National Health Insurance Fund, as provided for in 3° of III of Article 10 of the decree.

However, the CNIL considers that the wording of 8° of article 1 (the right of opposition provided for in article 21 of this same regulation does not apply for the purpose mentioned in 1° of article 8, excluding the transmission of data for research purposes

to the public interest group, etc.) could be clarified.

With regard to the processing implemented by the ARS, point 12° of article 1 of the draft decree draws the consequences of the limitation of the processing to the purpose of epidemiological surveillance at the regional level. The CNIL takes note of the exclusion of the right of opposition concerning the processing implemented by the ARS.B. On the right to erasure The draft decree adds, with regard to SI-DEP processing and processing implemented by the ARS, the right to erasure, among the rights available to the persons concerned.

The CNIL wonders about the mention, without further details, of a right to erasure of data even though the decree intends, in certain cases, to rule out the exercise of the right of opposition and that the consent does not has not been retained as the legal basis for processing or as a condition for processing health-related data.

The CNIL invites the ministry to specify the draft decree as to the procedures for exercising the rights of individuals.

The other provisions of the draft decree do not call for comments from the CNIL. The President,

M. L. Denis