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COUNCIL OF STATE

LITIGATION SECTION

APPLICATION INSTITUTING PROCEEDINGS

FOR: 1) The association “La Quadrature du Net” (LQDN), an association governed by the law of 1 July 1901 with registered offices at 115, rue de Ménilmontant, Paris (75020), registered with the Paris Police Prefecture under number

W751218406, and represented by [NAME], active member of the representative panel, sole representative.

- 2) The Association d'Accès aux Droits des Jeunes et d'Accompagnement vers la Majorité (AADJAM), an association governed by the law of 1 July 1901 with registered offices located at the Grancher Foundation, 119, rue de Lille, Paris (75007), registered under number W751249923, and represented by [NAME].
- 3) The association “Aequitaz”, an association governed by the law of 1 July 1901 with registered offices at 12, rue Ampère, Grenoble (38000), registered under number W263005972, and represented by [NAME].
- 4) The association “Amnesty International France”, an association governed by the law of 1 July 1901 with registered offices at 72–76, boulevard de la Villette, Paris (75019), registered under number W759000092, and represented by [NAME].
- 5) The Association Nationale des Assistants de Service Social (ANAS), an association governed by the law of 1 July 1901 with registered offices at 15, rue de Bruxelles, Paris (75009), registered under number W751007226, and represented by [NAME].
- 6) The association “APF France handicap”, an association governed by the law of 1 July 1901 with registered offices at 17, boulevard Auguste Blanqui, Paris (75013), registered under number W751019820, and represented by [NAME].
- 7) The association “Collectif Changer de Cap”, an association governed by the law of 1 July 1901 with registered offices at 15, avenue Robert Fleury in Viroflay (78220), registered under number W784009601, and represented by [NAME].
- 8) The Fondation Abbé Pierre pour le Logement des Défavorisés, a foundation governed by Law No. 87-571 of 23 July 1987, with registered offices at 3 rue de Romainville, Paris (75019), recognized as a public corporation promoting the public interest by decree of 11 February 1992, and represented by [NAME].
- 9) The association “Groupe d'information et de soutien des immigré·e·s” (Gisti), an association governed by the law of 1 July 1901 with registered offices at 3, villa Marcès, Paris (75011), registered under number W751034263, and represented by [NAME].
- 10) The association “Le Mouton numérique”, an association governed by the law of 1 July 1901 with registered offices at Inno3, 137 bd de Magenta, Paris (75010), registered under number W751238927, and represented by [NAME].
- 11) The association “Ligue des droits de l'Homme (LDH), an association governed by the law of 1 July 1901 with registered offices at 138, rue Marcadet, Paris (75018), registered under number W751030432, and represented by [NAME].

- 12) The association “Mouvement national des chômeurs et précaires” (MNCP), an association governed by the law of 1 July 1901 with registered offices at 17, rue de Lancry, Paris (75010), registered under number W595035303, and represented by [NAME].
- 13) The association “Mouvement français pour un revenu de base” (MFRB), an association governed by the law of 1 July 1901 with registered offices at 40, rue de Dantzig, Paris (75015), registered under number W751219070, and represented by [NAME].
- 14) The association “Collectif National Droits de l'Homme Romeurope”, an association governed by the law of 1 July 1901 with registered offices at 59, rue de l'Ourcq, Paris (75019), registered under number W751180197, and represented by [NAME].
- 15) The Syndicat des avocats de France (SAF), a professional association governed by Book I of Part II of the Labour Code, with registered offices at 34, rue Saint-Lazare, Paris (75009), and represented by [NAME].

AGAINST: The implicit decision, arising on 16 September 2024, by which the director of the Caisse nationale des allocations familiales (National Family Allowance Fund/CNAF) rejected a request to revoke the decision, revealed in various documents and communications, to implement data processing aimed at establishing a risk score for each beneficiary with a view to targeting the checks made by the Caisses d'allocations familiales (Family Allowance Funds/CAF).

The applicant associations, foundation and professional association hereby submit the contested decision for the censure of the Council of State and request that it be revoked in all aspects of their complaint, on the following legal and factual grounds.

Overview:

Personal Data Processing – Disproportion – No necessity – No legal basis – Direct discrimination – Indirect discrimination

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THE FACTS

1. Since the 2010s, the National Family Allowance Fund (CNAF) has been implementing algorithmic processing to help each Family Allowance Fund (CAF) target its checks on beneficiaries.
2. Data mining is the practice of automatically analyzing large amounts of data in an attempt to reveal trends.
3. Concretely, this algorithmic processing uses the personal data not only of each beneficiary of a CAF but also of their relatives (children, spouses, etc.) and assigns them a “risk score” each month. According to the CNAF's latest activity report, 32.3 million people, including 13.5 million children, receive a CAF benefit (see Exhibit No. 5, p. 20). These are all people affected by this algorithmic processing.
4. This score, between 0 and 1, reflects the probability that the beneficiary falls into the “target group” being sought by this means, i.e. anyone having received an undue payment (i.e. overpayment). In other words, the closer the score assigned by this algorithmic processing is to 1, the higher the probability that the beneficiary in question has been overpaid.
5. In a press release dated 2022, the CNAF claimed to use this algorithmic processing in order to “*detect behaviour in the files of beneficiaries that may represent an error as well as inconsistent situations that may result in a risk of overpayment. Any checks on the beneficiary's situation can also make it possible to detect reminders*” (Exhibit No. 6, p. 1). In a letter sent to the Commission d'accès aux documents administratifs (Administrative Documents Access Commission) (hereinafter “CADA”) at the end of 2022, the CNAF explained that this algorithmic processing aims to “*detect situations likely to generate a risk of overpayment*” and that “*Through datamining, different files with an overpayment risk score considered significant can be identified and checks can then be carried out*” (see Exhibit No. 7, p. 1).
6. The purpose of this algorithmic processing is thus not to search for cases of fraud. It is to detect beneficiary files for which a check might reveal the presence of an overpayment, regardless of any fraudulent intent.

7. Given the opacity surrounding the roll-out of this practice of establishing a score – which the Court of Justice of the European Union (CJEU) also calls “scoring” in its case law (see CJEU, 7 December 2023, *SCHUFA Holding*, case C-634/21) – in 2022, the association La Quadrature du Net asked the CNAF to provide the source code for this algorithmic processing, in application of Book Three of the Code governing Relationships between the Public and the Administration. Given the CNAF's refusal to communicate the source code of its algorithmic processing, La Quadrature du Net referred the matter to the CADA, which issued its opinion in December 2022, considering that the previous versions of the source code were fully communicable (see Exhibit No. 8).
8. Following this opinion, in March 2023, La Quadrature du Net obtained the partial source code for the old versions of this algorithmic processing: a version dated 2010 (used between 2010 and 2014), and a version dated 2014 (used between 2014 and 2019-2020). The CNAF specified that some variables used in the 2014 version were not being communicated on the grounds that they might “*still be present in the model in force*” (see Exhibit No. 9), and specified that it had developed a new version of its system in 2018, for which it maintained its refusal to communicate the source code. This current version of the algorithm, developed in 2018, was tested in 2019 in some CAFs and rolled out in 2020 (see Exhibit No. 10).
9. However, an analysis of the old versions from 2010 and 2014 makes it possible to understand how the current version of the CNAF's “scoring” process works. The CNAF’s algorithmic processing, used to detect a risk of overpayment, consists of a logistic regression: the final score is calculated on the basis of set variables, weighted by a certain coefficient. The odds ratio, derived from this coefficient, reflects the increased probability of having a score of 1. An odds ratio greater than 1 means that an increase in the variable results in an increase in the score. The higher the odds ratio, the higher the increase in the score.
10. The variables used by the models whose source code has been communicated relate to personal data held by the CNAF (see below for the legal status of algorithmic processing).
11. To build its model, the CNAF uses its “Rightful Payment Fraud” (PBDF) survey. This survey, carried out annually, is built from the files of 10,500

beneficiaries randomly selected and then analyzed by a team of controllers (see Exhibit No. 11).

12. On the basis of the PBDF survey, the CNAF divides the files into a target group and a control group (for the 2018 model, the target group corresponds to beneficiaries whose files revealed an overpayment of 600 euros or more over six months). Using these two groups, the CNAF conducts a massive data analysis (for the 2018 model, this analysis was carried out on 4,360 variables for each beneficiary, see Exhibit No. 10). This analysis aims to select certain variables and determine their odds ratio in order to model the probability that a beneficiary file forms part of the target group. In the 2018 model, 41 variables were used by the CNAF, relating to the *“characteristics declared by the beneficiary as regards their family situation, their professional situation, their financial situation and their residence”*, as well as *“data internal to the CAF relating to the management of the beneficiaries’ files, in particular data relating to the benefits received, the management of the file, details of the history of the file, declarations of a change of situation, the existence of possible disputes and the socio-economic features of the beneficiary’s home municipality”* (see Exhibit No. 6, p. 3).
13. As will be set out below, this algorithmic “scoring” thus consists of the processing of personal data within the meaning of EU Regulation No. 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, (hereinafter “GDPR”) and Law No. 78-17 of 6 January 1978 on data processing, files and freedoms (hereinafter “Data Protection Act”).
14. In addition, there is a body of evidence, notably contained in the partial list of data used by the CNAF in its old models of 2010 and 2014, indicating the existence of discrimination.
15. For these reasons, the associations La Quadrature du Net, AADJAM, Aequitaz, Amnesty International France, ANAS, APF France handicap, Collectif Changer de Cap, the Fondation Abbé Pierre pour le logement des défavorisés, the associations Gisti, Le Mouton numérique, the Ligue des droits de l 'Homme, the MNCP, the MRFB, Collectif National Droits de l 'Homme Romeurope, and the Syndicat des avocats de France, applicants, have, by means of a letter dated 12 July 2024, received on 16 July 2024,

requested that the Director of the CNAF revoke the decision, emerging from various CNAF documents and communications, to implement data processing to establish a risk score for each beneficiary with a view to targeting CAF checks.

16. By letter dated 31 July 2024 sent to La Quadrature du Net by email, the Director of Purchasing and Legal Affairs of the CNAF acknowledged receipt of the revocation request on 16 July 2024 (see Exhibit No. 4).
17. The lack of response regarding this application gave rise to an implicit decision to reject the request on 16 September 2024.
18. This is the decision under appeal.
19. It is specified that, even if the applicants were not able to know the source code of the currently used version of the disputed processing due to the persistent refusal of the CNAF to communicate this administrative document (see Exhibit No. 9), the documents they have managed to obtain, as well as the CNAF's public communication (see Exhibit Nos. 12, 7 and 6) at the very least constitute a body of evidence demonstrating that the current version of the disputed processing continues to form disproportionate processing that is a source of discrimination. In view of the precise and detailed elements produced by the applicants, and in the face of the persistent refusal of the CNAF to communicate the current source code, the existence of this disproportionate processing, which is a source of discrimination, must be considered established unless and until the CNAF produces the current source code, the only thing able to provide evidence to the contrary.

DISCUSSION

I. On the applicants' interest in acting

20. The applicants' interest in acting is established.
21. The association "La Quadrature du Net", first applicant, promotes and defends fundamental freedoms in the digital environment. Under the terms of Article 3 of its Articles of Association, its objectives include "the promotion and defence of the right to privacy, private life, the protection

of the confidentiality of communications and the secrecy of correspondence and the protection of personal data”, “the promotion and defence of emancipatory technical practices and uses for democratic, educational, cultural and human development purposes”, as well as the fight “against the digital divide”, “against widespread or political surveillance, of private or public origin” and “against the use of digital tools for *illegitimate surveillance purposes*”. The pursuit of this statutory purpose may, in particular, be done through “*the bringing of legal actions and litigation*”.

22. The applicant is regularly called upon to defend fundamental rights and freedoms before the French Council of State¹ and Constitutional Council²³, as well as before the judges of the European Union⁴.
20. The Association d'accès aux droits des jeunes et d'accompagnement vers la majorité (AADJAM), second applicant, fights exclusion, poverty and all forms of discrimination suffered by young people reaching the end of their care in the “Assistance sociale à l'enfance”. It supports young people as they come of age and access their rights. Its purpose, according to Article 2 of its statutes, is “ to fight exclusion, poverty and all forms of discrimination suffered by young people *at the end of their care in the Aide Sociale à l'Enfance and, more generally, to fight all violations of human rights or children's rights of which young people are victims during care*”.

¹. EC, 21 April 2021, Nos. 393099, 394922, 397844, 397851, 424717, 424718; EC, 13 April 2021, Nos. 439360, 440978, 441151, 442307, 442317, 442363, 443239; EC, 22 December 2020, No. 446155; EC, Ord., 4 January 2021, Nos. 447970, 447972 and 447974 (three cases); EC, Ord., 18 May 2020, Nos. 440442, 440445; EC, 16 October 2019, No. 433069; EC, 18 October 2018, No. 404996; EC, 26 July 2018, Nos. 394924, 394922, and 393099 (three cases); EC, 21 June 2018, No. 411005; EC, 18 June 2018, No. 406083; EC, 25 October 2017, No. 411005; EC, 17 May 2017, No. 405792; EC, 18 November 2016, No. 393080; EC, 22 July 2016, No. 394922; EC, 15 February 2016, No. 389140; EC, 12 February 2016, No. 388134; EC, Ord., 27 January 2016, No. 396220; EC, 9 September 2015, No. 393079; EC, 5 June 2015, No. 388134.

². Const. Council, 20 May 2020, No. 2020-841 QPC [priority constitutionality question]; Const. Council, 3 April 2020, No. 2020-834 QPC; Const. Council, 30 March 2018, No. 2018-696 QPC; Const. Council, 2 February 2018, No. 2017-687 QPC; Const. Council., 15 December 2017, No. 2017692 QPC; Const. Council, 4 August 2017, No. 2017-648 QPC; Const. Council, 21 July 2017, No. 2017-646/647 QPC; Const. Council, 2 December 2016, No. 2016-600 QPC; Const. Council, 21 October 2016, No. 2016-590 QPC; Const. Council, 24 July

³, No. 2015-478 QPC.

⁴. TEU, Ord., 14 December 2020, case T-738/16; CJEU, 6 October 2020, case C-511/18, C-512/18 and C-520/18.

It can, in this regard, *“take legal action in the individual or collective interest”*.

21. It is thus admissible for it to act or intervene before the Council of State against measures that have an impact on minors or young adults⁵.
22. Article 2 of the statutes of the association “Aequitaz”, third applicant, states that it fights *“a sense of powerlessness generated by injustice”* in defence of *“marginalized people”*. It acts in the field of social rights, fighting against discrimination and for the right to food.
23. Amnesty International France, the fourth applicant, forms part of Amnesty International's global movement, which has extensive expertise in human rights issues, including the right to social security, to privacy, and to equality and non-discrimination. Under the terms of Article 1.1 of its statutes, its mission is to enable everyone to enjoy *“all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments”* as well as *“to undertake research and action focused on preventing and ending grave abuses of these rights”*.
24. Amnesty International has established a centre of expertise in the field of algorithmic accountability, both from a technical and legal perspective, and has participated in work to defend the rights of individuals from discriminatory data processing, including before the Serbian Constitutional Court, where it challenged the constitutionality of the use of semi-automated decision-making by the Social Welfare Registry, and acting as an advisor in the context of a complaint filed with the World Bank Inspection Panel.
25. The Association nationale des assistants de service social ((ANAS), the fifth applicant, promotes social service in France by bringing social workers and students together. It studies issues related to the profession and proposes improvements aimed at strengthening the effectiveness of social action,

⁵. EC, Ord., 12 December 2022, No. 469133; EC, Ord., 17 May 2023, No. 473358; EC, 12 June 2023, No. 463398, ECR T.

in the service of users. Article 2 of its statutes states that it defends the interests of social workers and social work students “*for the best service for users*”, as well as “*promoting, from the local to the global level, the values and profession of Social Work*”.

26. The association “APF France handicap”, sixth applicant, brings people with disabilities and their families together with able-bodied people in solidarity. It is committed to defending the rights of people with disabilities and their families, fighting discrimination and prejudice against them. Under the terms of Article 1.1 of its statutes, it thus fights “*against the discrimination*” to which people with disabilities may fall victim. For this, it can bring a “*class action against any forms of discrimination of people with disabilities before any court*”. It is thus admissible for it to take action against regulatory acts that have consequences for people with disabilities⁶.

27. The “Collectif Changer de Cap” association, the seventh applicant, is a platform for networking and reflection on social and environmental justice, accessing social rights and support. It is committed to fighting against the decline in rights and solidarity. It defends a more transparent digital public service, to the benefit of people and the general interest. According to Article 2 of its statutes, its purpose is thus to “*promote a convergence of actions and initiatives aimed at promoting social and climate justice*”, as well as to “*carry out rights and advocacy actions to give a voice to all and to ensure the rule of law in situations of injustice, discrimination or illegality*”.

28. The Fondation Abbé Pierre pour le logement des défavorisés, the eighth applicant, acts against exclusion and poverty so that disadvantaged and marginalized people can find dignified and sustainable housing, regardless of their resources and their social situation. It defends the idea that no life project can be envisaged without access to dignified and decent housing conditions. According to Article 1 of its statutes, its purpose is “*to*

⁶. EC, 9 November 2023, No. 465268; EC, 29 September 2023, No. 464677, Rec. T.; EC, 30 December 2021, Nos. 440376, 440976, 442327, 442361, 442935; EC, 7 April 2021, No. 432692, EC, 22 November 2019, No. 432648; EC, 31 July 2019, No. 421280.

undertake the necessary actions with national and international public or private bodies to ensure the management of problems related to the housing of people in difficulty", and "to fight all forms of discrimination in access to or maintenance in housing". It is thus admissible for it to intervene or take action before the Council of State against regulatory acts relating to housing conditions⁷, as well as to take action against a circular relating to detention conditions⁸

29. The association "Groupe d 'information et de soutien des immigrés" (Gisti), the ninth applicant, is engaged in providing information, defence and legal aid to foreigners in France. The association promotes the rights of foreigners and freedom of movement, in line with the principle of equality and non-discrimination. According to Article 1 of its statutes, its purpose is *"to support, by all means possible, [the] action [of foreigners or immigrants] aimed at achieving recognition of and respect for their rights, on the basis of the principle of equality"*, and *"to combat all forms of racism and discrimination, direct or indirect, and assist those who fall victim"*. It is regularly called upon to act before the Council of State regarding measures affecting the rights of foreigners in France⁹
30. The association Le Mouton Numérique, tenth applicant, analyses the political, social and environmental impacts of digital technologies. It campaigns to highlight and debate the consequences of the technological choices at work. Its purpose, according to Article 2 of its statutes, is *"to encourage, organize and lead initiatives around current topics and, particularly, around digital and technology, as well as to promote and defend the rights and freedoms of people in the face of technological transformations"*. To do this, *"it acts before the judicial and administrative authorities on their behalf"*.

⁷. EC, 29 August 2024, No. 488640; EC, 29 December 2023, No. 488337; EC, 20 December 2018, No. 414123.

⁸. EC, 10 October 2023, Nos. 469328, 470574, 471464, 471949.

⁹. EC, 31 July 2024, No 495652; EC, 14 June 2024, No 494948; EC, Sec., 13 May 2024, No. 472155, Rec.; EC, 25 April 2024, No. 491232, Rec. T.; CE, 17 January 2024, No. 466052.

31. The association "Ligue des droits de l'Homme", eleventh applicant, fights all forms of discrimination, in particular those aimed at the most vulnerable, and ensures that the use of data processing and new technologies complies with everyone's right to privacy. It can be seen from the third paragraph of Article 1 of its statutes that the association "*intervenes whenever it is informed of an infringement of the principles set out in the preceding articles, to the detriment of individuals, communities and peoples. Its means of action are: appealing to the public conscience, interventions with the public authorities, at all levels [...]*". The right to respect for private and family life is one of the fundamental freedoms that the Ligue des droits de l'Homme has set itself the task of defending.
32. The Ligue des droits de l'Homme's interest in acting against decisions authorizing the creation of personal data processing has thus been widely recognized by the administrative judge¹⁰ as has its action against decisions to use such processing¹¹.
33. The association "Mouvement national des chômeurs et précaires" (MNCP), twelfth applicant, is a federation of unemployment centres organized as a collective voice for the unemployed and the insecure, offering an unconditional welcome in its associations, the defence of collective and individual rights, popular education and the social and solidarity economy. According to article 1.2 of its statutes, it "*brings together individuals with voluntary, cooperative, or other associations acting to defend the rights and interests of the unemployed and/or insecure, and whose purpose is to work for the coming together of the unemployed and insecure to fight against all forms of exclusion*". To this end, Article 1.4 of its statutes provides, in particular, that it supports "*initiatives to promote the creation of jobs and socially useful enterprises as well as the development of local, economic and intellectual initiatives that can contribute to finding a solution to the problem of unemployment*", that it produces "*expert analysis and testimony to the concrete situations*

¹⁰. EC, 24 December 2021, No. 447518; EC, 27 March 2020, No. 431350, ECR T.; EC, 11 July 2018, No. 414827; EC, Ord., 13 May 2015, No. 389816; EC, 11 April 2014, No. 360759; EC, 12 March 2007, No. 297888, Rec.

¹¹. TA Lille, Ord., 19 May 2023, No. 2304177.

of the unemployed and insecure”, and that it is “a source of proposals in the fight against exclusion”.

34. The association "Mouvement français pour un revenu de base" (MRBF), thirteenth applicant, has made it its mission to promote universal basic income in the public debate and, under the terms of Article 3 of its statutes, until *"its recognition as a universal human right"*.
35. The association "Collectif national Droits de l'Homme Romeurope", fourteenth applicant, leads a network that acts for access to rights and the enforcement of the rights of people living in informal settlements (squats, slums, encampments). It combats all forms of racism, discrimination or incitement to hatred on the basis of nationality or real or supposed ethnicity. In accordance with Article 2 of its statutes, it defends *"migrants in France from Eastern Europe, Roma or designated as such"*, in particular with regard to the *"great insecurity"* that may affect them. Its purpose is *"to defend access to the common law for all"*, as well as *"to combat any form of racism, discrimination or incitement to hatred due to origin, membership or non-membership, real or supposed, of an ethnic group, a nation, a race"*. It can implement its corporate purpose in *"in [before] the courts"*.
36. The Syndicat des avocats de France, fifteenth applicant, is a professional association governed by Book I of Part II of the Labour Code. It brings together lawyers committed to defending citizen justice, guaranteeing public and individual rights and freedoms, and enabling effective access to the law for all. According to Article 2 of its statutes, its purpose is in particular *"Action to involve lawyers in initiatives to ensure the functioning of a justice system that is more democratic and closer to citizens and to better guarantee public and individual rights and freedoms"*.
37. In this case, as will be developed below, this relates to the disputed algorithmic processing of the personal data of each beneficiary of a CAF in order to calculate a monthly risk score that will determine the probability of undergoing a check. This processing, implemented by the CNAF, constitutes mass surveillance and a disproportionate interference in the right to privacy and the protection of personal data. Moreover, as will be demonstrated below, the effects of this algorithmic processing affect the

most insecure people, in particular, and may include migrants. Finally, algorithmic processing directly and indirectly discriminates against certain groups, including people with disabilities, young adults, single mothers, people receiving minimum social benefits or allowances, or people on unstable incomes. It has the effect of degrading the public social security service. In short, the disputed algorithmic processing runs counter to the rights that the applicant organizations have set themselves the task of defending.

38. As a result, the applicants have an interest in taking action against the CNAF's refusal to revoke its decision to implement algorithmic processing in order to target checks.

II. On the jurisdiction of the Council of State as first and last instance

42. The Council of State is competent to hear the CNAF director's refusal to revoke the decision to implement data processing in order to establish a risk score for each beneficiary with a view to targeting CAF checks.

43. In law, the Council of State is competent to hear disputes against regulatory acts of the CNAF as first and last resort (see EC, 28 December 2017, *Autonomous Pension and Provident Fund for Nurses, Massage Therapists, Pedicure-Podiatrists, Speech-Language Pathologists and Orthoptists*, No. 401954, Rec. T. p. 529; EC, 22 December 2022, *Department of Haute-Vienne*, No. 462322).

44. In this case, the decision to implement algorithmic processing to calculate the risk score of each beneficiary is a regulatory act, taken by the CNAF. While this decision has not been formalized in a written act, it has emerged, as previously recalled, from multiple documents communicated to the applicants or made public by the CNAF (see Exhibit Nos. 13, 8, 7 and 6).

45. It follows that the Council of State is competent to hear the refusal to revoke this decision.

III. On the legal status of the disputed processing

46. As a preliminary point, we need to review the applicable legal framework and the legal nature of the algorithmic processing whose refusal to revoke the decision implementing it is being challenged in these proceedings.

A. As regards the existence of personal data processing, including sensitive data

47. The disputed algorithmic processing constitutes data processing within the meaning of the GDPR and the Data Protection Act, including sensitive data.

48. In law, under Article 4(1) of the GDPR, personal data is defined as:

“any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;”

49. The CJEU considers that the concept of personal data, within the meaning of the GDPR, must be interpreted broadly. It is thus recalled that, *“in order to treat information as personal data, it is not necessary that that information alone allows the data subject to be identified”* and that *“that personal data which could be attributed to a natural person by the use of additional information must be considered to be information on an identifiable natural person”* (see CJEU, 7 March 2024, IAB Europe, case C-604/22, pt. 39).

50. Within the concept of personal data, there is a particular category of so-called “sensitive” data, the processing of which is therefore governed by

additional rules. Article 9(1) of the GDPR lays down a principle prohibiting the processing of this sensitive data while defining this concept:

“Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation shall be prohibited.”

51. Article 6 I of the Data Protection Act repeats the same principle of prohibition and the same definition as Article 9 of the GDPR.
52. The CJEU considers that the concepts of *“special categories of personal data”* and *“sensitive data”* must be interpreted broadly in the light, on the one hand, of the objective of the GDPR and Directive 95/46/EC which *“is to ensure a high level of protection of the fundamental rights and freedoms of natural persons, in particular of their private life, with respect to the processing of personal data concerning them”* and, on the other, in the light of the *“special nature of sensitive data, which requires enhanced protection”* (see CJEU, Gr. Ch., 1 August 2022, *OT v. Vyriausioji tarnybinės etikos komisija*, case C-184/20, §§ 125–126).
53. It is by applying this broad methodology for interpreting the concepts of the GDPR that the CJEU considered that *“for personal data to be classified as data concerning health, within the meaning of Article 8(1) of Directive 95/46 and Article 9(1) of the GDPR, it is sufficient that they are capable of revealing information about the health status of the data subject ”* (see CJEU, Gr. Ch., 4 October 2024, *Lindenapotheke*, case C-21/23, pt. 83). In particular, it does not require details on a pathology or the exact nature of a disability, but simply a *“state of health”*.
54. In addition, Article 4(2) of the GDPR defines processing as:
“any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means,

such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;”

55. Finally, according to Article 4(7), the data controller is:

“the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; [...]”

56. The CJEU considers that the concept of “controller” within the meaning of Directive 95/46/EC must be interpreted broadly, in order to ensure effective protection of the right to privacy and the protection of personal data (see CJEU, Gr. Ch., 5 June 2018, *Wirtschaftsakademie Schleswig-Holstein*, case C-210/16, pts 26–27). This interpretation is, *mutatis mutandis*, perfectly applicable to the interpretation of the GDPR, which replaced Directive 95/46/EC.

57. In this case, the disputed algorithmic processing is being implemented by the CNAF in order to establish profiles to ascertain those people most likely to have received an overpayment. As noted above (see above, § 9), each beneficiary is assigned a “risk score” of between 0 and 1. This score corresponds to the alleged probability, calculated by the algorithmic processing, that the recipient has received an overpayment. The higher the score, the higher the probability that the person concerned will be subject to a check from the local CAF.

58. As explained above (see above, § 5), the purpose of this processing is not to search for fraudulent situations but only for undue situations, i.e. regardless of any fraudulent intent.

59. It emerges from the CNAF’s explanations and the documents produced by this latter that each beneficiary’s risk score is the result of the processing of personal data. Indeed, the 2010 model includes 37 variables (6 were redacted by the CNAF during the communication of the source code for the algorithmic processing); the 2014 model, meanwhile, uses 35

variables (3 were redacted by the CNAF). The 2018 model contains 41 (none have been communicated to the applicants).

60. However, the variables used by the disputed processing relate to personal data within the meaning of Article 4 of the GDPR (see Exhibit No. 12). Some variables relate directly to an identified or identifiable natural person: for example, the age of the beneficiary, the age of the spouse, the number and age of the children, etc.; other variables relate indirectly to natural persons: this is the case of the number of changes in family situation, the number of changes in place of residence, etc. The partial list of variables used in the 2010 and 2014 models was provided by the CNAF and includes personal data (see Exhibit No. 12).
61. For the 2018 model, currently being used, the CNAF told the CADA to use *“characteristics declared by the beneficiary on their family, professional or financial situation and residence”* as well as *“data internal to the CAF relating to the management of the beneficiaries' files, in particular data relating to the benefits received, to the management of the file, to elements of the history of the file, to the declarations of change of situation, to the existence of possible disputes and to the socio-economic features of the beneficiary's home municipality”* (see Exhibit No. 7, p. 3). The 2018 model, currently being implemented by the CNAF decision whose revocation is being requested, is therefore still processing the personal data of recipients.
62. In addition, there is no doubt that the status of beneficiary of the Adult Disability Allowance (AAH), used in the 2014 model and probably still used – at least indirectly – in the current model, constitutes data relating to the health of individuals within the meaning of Article 9 of the GDPR and Article 6 of the Data Protection Act and the case law of the CJEU (see CJEU, Gr. Ch., 4 October 2024, *Lindenapotheke*, above, pt 83).
63. For the record, the Social Action and Families Code defines disability as any limitation of activity or restriction of participation in the life of society and suffered in its environment by a person due to a substantial, lasting or definitive impairment of one or more physical, sensory, mental, cognitive or psychological functions, multiple disabilities or a disabling health disorder (see Article L. 114 of the Social Action and Families Code).

64. The CNAF has never denied that the algorithmic processing it is implementing uses personal data processing. In 2010, the Commission nationale de l'informatique et des libertés (French Data Protection Agency, hereinafter "CNIL") was informed by the CNAF of this algorithmic processing (even though the purpose in 2010 was not the same as today) and considered that it constituted personal data processing (see Exhibit No. 13). In 2022, the CNAF also explicitly confirmed that this algorithmic processing should be understood as personal data processing (see Exhibit No. 6).
65. In addition, it is clear both from the CNIL's 2010 decision (see Exhibit No. 13) and from the CNAF's explanations of the way this processing is done (see Exhibit No. 7) that the CNAF determines both the purposes and the means of this algorithmic processing: it is the public authority that determines the purposes (which have thus evolved between 2010 and today since it is no longer a question of identifying fraud but only overpayments) and the means (it is the CNAF agents who develop the models and variables used). The CNAF has also explicitly indicated that it is responsible for this algorithmic processing (see Exhibit No. 6).
66. It follows that the disputed processing constitutes personal data processing within the meaning of the GDPR and the Data Protection Act, including sensitive data, for which the controller is the CNAF.

B. As regards the applicable legal framework

67. The GDPR is applicable to the case of algorithmic processing implemented by the CNAF for the purpose of determining a risk score for each recipient, reflecting the probability that they may have obtained an overpayment.
68. In law, under Article 2 of the GDPR:

"1. This Regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

2. *This Regulation does not apply to the processing of personal data:*

[...]

d) by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.

[...]"

69. Directive EU 2016/680 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data (hereinafter the 'Law Enforcement Directive'), takes up this area of competence in the negative, since Article 2(1) states that *"This Directive applies to the processing of personal data by competent authorities for the purposes set out in Article 1(1)."* However, according to Article 1(1) of the "Law Enforcement" Directive:

"This Directive lays down the rules relating to the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security."

70. In addition, the "Law Enforcement" Directive defines the notion of "competent authority" in Article 3(7) as:

"a) any public authority competent for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security; or

b) any other body or entity entrusted by Member State law to exercise public authority and public powers for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security;”

71. In the context of a dispute between an online platform and the tax administration, the CJEU considered that *“the collection, by the tax administration of a Member State from an economic operator, of information involving a significant amount of personal data”* falls within the scope of the GDPR (see CJEU, 24 February 2022, *Valsts ien, emumu dienests*, case C-175/20). Indeed, in this case, the tax administration is neither a “competent authority” within the meaning of the “Law Enforcement” Directive (pt. 44) nor does it pursue a mission falling within this directive (pt. 45). The Court stated in particular that *“although it cannot be excluded that the personal data at issue in the main proceedings may be used in the context of criminal proceedings that could be brought, in the event of a tax offence, against some of the data subjects, it does not appear that these data are being collected for the specific purpose of bringing such criminal proceedings or in the context of State activities relating to areas of criminal law”*.
72. Applying this reasoning, the Council of State considered that personal data processing whose purpose *“is to enable, by fighting tax fraud and tax evasion, improved compliance of French and American taxpayers with their tax obligations”* falls under the GDPR (see EC, Ass., 19 July 2019, *Association des Américains accidentels*, Nos. 424216, 424217, ECR p. 296, pt.18). The Court of Cassation adopted the same position (see Com., 1 June 2023, No. 21-18.558, Bull., pt. 10).
73. In this case, the CNAF is not a competent authority within the meaning of the “Law Enforcement” Directive and the disputed algorithmic processing does not pursue purposes falling within said directive.
74. Indeed, on the one hand, the CNAF is not a competent authority in the sense that it is not responsible for the prevention or detection of criminal offences. While the CNAF may wish to ensure that the beneficiaries of the

CAF do not fraudulently benefit from support, this is only an ancillary mission, stemming from its main pursuit of social mission.

75. On the other hand, as recalled above (see above, § 5), the purpose of the disputed algorithmic processing is not to search for cases of fraud but simply cases of overpayment, regardless of any criminal classification, most situations of overpayment being the result of declarative errors, without fraudulent intent on the part of the recipient. The disputed processing therefore does not pursue a purpose of *“prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties”* as stated in Article 1(1) of the “Law Enforcement” Directive.
76. It follows that the disputed algorithmic processing falls within the scope of the GDPR in accordance with Article 2(1) of the Regulation.

C. As regards the existence of processing that results in automated individual decision-making

77. The disputed algorithmic processing falls under Article 22 of the GDPR in that it results in the data subjects being the object of profiling or, at the very least, decision-making based exclusively on automated processing.
78. In law, Article 22(1) of the GDPR sets out the principle that *“The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.”*
79. The concept of “profiling” is defined in Article 4 of the GDPR as:
“any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;”
80. Recital 71 of the GDPR specifies how to interpret this Article 22:

“The data subject should have the right not to be subject to a decision, which may include a measure, evaluating personal aspects relating to him or her which is based solely on automated processing and which produces legal effects concerning him or her or similarly significantly affects him or her, such as automatic refusal of an online credit application or e-recruiting practices without any human intervention. Such processing includes ‘profiling’ that consists of any form of automated processing of personal data evaluating the personal aspects relating to a natural person, in particular to analyse or predict aspects concerning the data subject’s performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, where it produces legal effects concerning him or her or similarly significantly affects him or her. [...] »

81. The CJEU recently interpreted Article 22 of the GDPR in a case concerning *“the automated establishment, by a company providing commercial information, of a probability value based on personal data relating to an individual and concerning the ability of that individual to honour payment commitments in the future”*, considering that such processing *“constitutes an ‘automated individual decision’”* (see CJEU, 7 December 2023, *SCHUFA Holding*, prev., pt. 73).
82. For this, the CJEU recalled first that *“three cumulative conditions”* must be met for Article 22 of the GDPR to apply: *“first, that there must be a ‘decision’, second, that this decision must be ‘based exclusively on automated processing, including profiling’, and, third, that it must produce ‘legal effects [concerning the person in question] ‘or ‘affect him or her in a similarly significant way’”* (*ibid.*, pt 43).
83. In its judgement, the Court held that the concept of “decision” must be understood in a broad sense (*ibid.*, pts. 44–45), and includes *“acts that may affect the data subject in multiple ways”*. The Court thus considers that this concept *“[encompasses] the result of the calculation of the solvency of a person in the form of a probability value concerning that person’s ability to honour payment commitments in the future”* (*ibid.*, pt. 46). This notion of “decision” within the meaning of Article 22 is therefore

an autonomous notion of EU law that cannot be confused with the notion of “decision” within the meaning of French administrative law.

84. With regard to the profiling condition, the CJEU recalls that the calculation of a solvency score for each person applying for a loan consists of profiling within the meaning of Article 4 of the GDPR (*ibid.*, pt. 47).
85. Finally, it considers that, when the decision following the establishment of this risk score “*is guided 'decisively' by this value*”, then this decision produces legal effects concerning the person in question or significantly affects him or her similarly (*ibid.*, pt. 47).
86. In this case, the disputed algorithmic processing consists of the establishment of a risk score whose purpose is to guide the administration's action in triggering a check.
87. First, the calculation of a risk score is an act “*which may affect the data subject*” within the meaning of EU law (*ibid.*, pt. 46). In fact, this score will allow the CAF to target their checks.
88. At this stage, it should be stressed that the presence of an administrative decision subsequent to the establishment of the risk score (for example when a check is decided by an agent) does not affect the presence of a decision within the meaning of Article 22 of the GDPR. The circumstance, as recalled by the CNAF (see Exhibit No. 6), by which only CAF controllers can make the decision to conduct a check of a file with a high score or, at the end of the check, sanction the data subject, does not affect the presence of a “decision” within the meaning of Article 22 of the GDPR.
89. Secondly, the establishment of such a risk score is the result of an assessment of the beneficiary's situation. It emerges from the presentation of the disputed processing by the CNAF itself that “*The objective [of the disputed processing] is to calculate a risk, for each of the beneficiaries, of being the object of an overpayment if one were to check their situation*” (see Exhibit No.7, p. 2). In other words, the calculated score represents the risk of being in an undue situation. In this respect, it is therefore an assessment of the beneficiary’s personal aspects. The disputed processing therefore conducts profiling of each recipient or, at the very least, an assessment of certain personal aspects concerning each beneficiary taken on the sole basis of automated processing.
90. Here, again, it should be noted that this score is calculated in a fully automated way. It involves the strict application of variables and their

weights defined in the algorithmic processing, without human evaluation. The fact that this score is used, once it has been established, to guide the human checks made by CAF controllers does not affect the exclusively automated nature of the step involved in calculating this score, prior to the checks.

91. Thirdly, the risk score thus calculated will decisively guide the subsequent checks of the CAF insofar as the purpose of this algorithmic processing is to target such checks. The CNAF explains that *“different files with an undue risk score considered important are identified and checks can then be carried out”* (see Exhibit No. 7, p. 1).
92. Above a certain score, the beneficiaries’ files are communicated to the CAF controllers in a so-called “datamining” list. On the one hand, the controllers then have to check the people on this “datamining” list. It is therefore the result of the score, with a threshold effect, that determines the presence of a file on this list, and thus whether or not the file must be checked. On the other, the CAF controllers have performance targets: they are required to check a certain number of “datamining” files over a given period of time. This therefore has the consequence of very strongly encouraging controllers to start their checks with the files receiving the highest risk score.
93. It follows that the disputed algorithmic processing constitutes profiling or, at the very least, an automated individual decision within the meaning of Article 22 of the GDPR.
94. In the alternative, if the Council of State were to hold the slightest doubt on this classification, and insofar as the classification of processing under Article 22 of the GDPR would result in the illegality of the system, the Council of State could refer the following question to the CJEU for a preliminary ruling:

“Does the processing of personal data, the controller of which is a public social administration entrusted with a public service mission, with the purpose of establishing a risk score for each public service user in order to target the administration's checks, not fall within the scope of Article 22 of Regulation No. 2016/679 of 27 April 2016 insofar as the risk score is calculated for each user and the check on the user is

directly dependent on the value of the score, in particular because of a threshold beyond which the score determines the user's inclusion on a list of persons to be checked?"

IV. On internal unlawfulness

A. As regards the disproportionate nature of the data processed

95. In the first place, the refusal to revoke the regulatory decision establishing the disputed algorithmic processing is unlawful in that it violates Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "ECHR"), Article 17 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR"), Article 5(1)(c) of the GDPR and Article 4(3) of the Data Protection Act, read in the light of Articles 7, 8 and 52 of the Charter of Fundamental Rights of the European Union (hereinafter "the Charter") due, in particular, to its disproportionate nature.
96. In law, under the terms of Article 8 of the ECHR, entitled "*Right to respect for private and family life*":

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

97. The ICCPR likewise protects the right to privacy in its Article 17, which states:

“1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

98. Under EU law, Article 5(1)(c) of the GDPR requires that personal data be processed in a manner that is *“adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (‘data minimisation’)*”. Article 4(3) of the Data Protection Act repeats the same principle. Furthermore, Recital 39 of the GDPR states that *“Personal data should be processed only if the purpose of the processing cannot be reasonably achieved by other means.”*

99. The GDPR and the Data Protection Act must be read in the light of the Charter, which recalls in its Article 7, entitled *“Respect for private and family life”*, that *“Everyone has the right to respect for his or her private and family life, home and communications.”* In addition, under the terms of Article 8, entitled *“Protection of personal data”*, of the same Charter:

“1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority.”

100. The data minimization principle of the GDPR and the Data Protection Act must therefore be interpreted strictly. The CJEU recalled in particular that, *“As recital 39 of the GDPR makes clear, that requirement of necessity is not met where the objective of general interest pursued can*

*reasonably be achieved just as effectively by other means less restrictive of the fundamental rights of data subjects, in particular the rights to respect for private life and to the protection of personal data guaranteed in Articles 7 and 8 of the Charter, since derogations and limitations in relation to the principle of protection of such data must apply only in so far as is strictly necessary (see CJEU, Gr. Ch., 22 June 2021, *Latvijas Republikas Saeima*, case C-439/19, pt. 110). As a result, only personal data that is strictly essential to the proposed operation may be processed.*

101. Similarly, the proportionality of the processing is assessed not only with regard to the nature of the personal data collected but also with regard to the purpose pursued (see CJEU, Gr. Ch., 22 June 2021, *Latvijas Republikas Saeima*, prev., pt. 98; CJEU, 11 December 2019, *Asociația de Proprietari bloc M5A-ScaraA*, case C-708/18, pt. 48).
102. In a recent example, the judge hearing the application for interim measures at the Montreuil Administrative Court, hearing a case concerning the legality of an automated image and sound analysis system combating examination fraud, considered that *“the automated verification of the identity of the candidate, the continuous analysis of his or her filmed face, the continuous analysis of his or her gaze, access to all the data stored on his or her computer, the capture and automated analysis of the sound and visual environment [...] [is] an excessive infringement of the right to the protection of personal data that candidates derive from the General Data Protection Regulation”* (see Montreuil AC, Ord., 14 December 2022 [REDACTED], No. 2216570, pt. 8).
103. Finally, under Article 52(1) of the Charter:

“Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.”

104. An assessment of this criterion involves first examining whether the essential content of the right is respected, i.e., whether the right is effectively emptied of its essential content. If the essential content of the right is infringed then the measure is contrary to the Charter and it is thus, by hypothesis, unnecessary to continue assessing its compatibility with the other rules set out in Article 52(1) (legitimacy of the objective pursued; necessity; proportionality).
105. In this case, the disputed algorithmic processing handles a considerable volume of personal data relating to very precise details of the lives of the data subjects, even though it is possible to pursue the purpose of recovering overpayments by means that are less prejudicial to the rights and freedoms protected by the Charter and the ECHR.
106. As previously recalled (see above, §§ 59 *et seq.*), it appears from the list produced by the CNAF that the 2010 model included 37 variables, the 2014 model 35, and the 2018 model currently used 41. These variables are particularly specific and relate to details of people's lives. There are details of the family situation, on disability, age, the nature of the beneficiary's budget, etc. The disputed processing consists of using the mass of data available to model and target certain beneficiary profiles.
107. In addition, the algorithmic processing is not limited to the processing of the data of the beneficiaries alone: to calculate the score of a beneficiary, the disputed processing also processes the personal data of relatives (situation of the spouse, children, etc.). According to the CNAF's latest activity report, this represents 32.3 million people, including 13.5 million children (see Exhibit No. 5, p. 20).
108. Similarly, the disputed processing takes into account changes in certain features of the file over several months. For example, to build the value relative to the "*Number of months in activity over 12 months of the claimant and spouse*", the disputed algorithmic processing must process 24 pieces of personal data: a Boolean value ("*In activity this month*" or "*Not in activity this month*") for 12 months, for two people. This is repeated for all variables taking into account a history.
109. Specifying these details of people's lives, combined with the fact that this algorithmic processing calculates a score – and therefore processes the data – of any beneficiary of a CAF as well as their relatives declared to the Fund, has the consequence of the disputed algorithmic processing

not respecting the essential content of the right to privacy and the protection of personal data, protected by Articles 7 and 8 of the Charter.

110. At the very least, the processing of such a large volume of data, when the purpose of seeking overpayments can be pursued by other means, far less infringing of fundamental rights, is manifestly disproportionate.
111. It is fallacious to assert, as the CNAF did to the CADA, that *“the checks carried out on the basis of datamining thus accounted for 6% of all the checks carried out on documentation or on-the-spot but almost 25% of the total overpayments detected”* (see Exhibit No.7, p. 2), suggesting that the algorithmic processing is effective when this is not the case.
112. This statement by the CNAF mixes two different types of checks, on-the-spot checks and documentary checks. These types of checks are different in nature, however, as on-the-spot checks are more comprehensive than documentary checks. This has two consequences: on the one hand, the number of on-the-spot checks is much lower than the number of documentary checks, and, on the other, the average overpayments recovered during an on-the-spot check are higher than in the case of a documentary check.
113. However, a large proportion of “datamining checks” (i.e. those triggered by the beneficiary's score) are on-the-spot checks, explaining the large proportion of overpayments detected by them.
114. And yet, with regard to on-the-spot checks, it appears, according to figures from the CNAF's 2021 report “Preventing and Combating Fraud in Legal Benefits” (see Exhibit No. 15), and from observations sent by the CNAF to the CADA (see Exhibit No. 7), together with the technical documentation of the 2018 model of algorithmic processing (see Exhibit No.10), that while datamining is at the origin of 69% of on-the-spot checks, it is only responsible for 49% of the total overpayments recovered following those on-the-spot checks. In other words, 31% of on-the-spot checks, triggered other than via the disputed processing, are responsible for 51% of overpayments recovered during such checks. Alternatives to datamining controls, of higher efficiency – at least in terms of average overpayments detected – therefore exist.
115. An alternative metric would be to measure the overpayment rate, which corresponds to the proportion of checks that resulted in finding an overpayment, regardless of its amount. However, the figures available in

2019 (see Exhibit No. 14) show that the differences are small with regard to the average rate of on-the-spot checks: the rate of overpayment of on-the-spot datamining checks was 60.2%, for a category average of 55%.

116. Table 1 summarizes the statistics on the effectiveness of on-the-spot checks.

	Number of checks (2021)	% of checks (2021)	Amount of overpayment in Euro (2021)	% of overpayments (2021)	Overpayment rate (2019)
Datamining	88,196	69%	143,820,196	49%	60.2%
Other	39,682	31%	146M	51%	
Total	127,878	100%	290M €	100%	55%

TABLE 1 – On-the-spot check statistics (sources: 2019 and 2021 annual fraud reports, observations sent by the CNAF to the CADA, 2018 technical documentation)

117. The data published by the CNAF concerning documentary checks likewise show that alternative techniques, at least as effective as datamining checks, exist for the targeting of this type of check. According to figures from the CNAF's annual report "Preventing and Combating Fraud in Legal Benefits" from 2021 (see Exhibit No. 15) and the observations sent by the CNAF to the CADA (see Exhibit No. 7), while it is true that datamining checks account for 17% of the overpayments detected in 4% of the checks in the category, other methods of targeting checks are much more effective. According to the 2019 annual report on fraud (see Exhibit No. 15), the overpayment rate for datamining checks was only 26%, while it was 47% for so-called "annual RAC" checks ("out-of-pocket expenses", checking the consistency of declared income).

118. Table 2 summarizes the statistics on the effectiveness of documentary checks.

	Number of checks (2021)	% of checks (2021)	Amount of overpayment in Euro (2021)	% of overpayments (2021)	Overpayment rate (2019)
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<i>Datamining</i>	165,962	4%	75,967,047	17%	26%
Annual RAC	580k	15%			47%
Other	3.2M	81%			
Total	3.9M	100%	445M	100%	

TABLE 2 – Documentary Check Statistics (Sources: 2019 and 2021 Annual Fraud Reports). Note: the annual RAC inspections almost exclusively trigger documentary checks (88 on-the-spot checks in 2014) so they are here assimilated with documentary checks despite the absence of detailed figures.

119. By advancing the fact that the “datamining” checks account for only 6% of the documentary and on-the-spot checks when they make it possible to recover 25% of the overpayments, the CNAF is thus trying, by aggregating these different categories of checks, to hide the fact that other methods of targeting the checks are more effective, without requiring surveillance as massive as the disputed processing. It therefore does not meet the requirement of necessity.
120. It follows that the disputed processing does not respect the essential content of the right to privacy and the protection of personal data, as protected by Articles 7 and 8 of the Charter, and constitutes, at the very least, a manifestly disproportionate infringement of these rights.
121. It is specified that, as recalled previously (see above, § 19), in the face of the CNAF's persistent refusal to communicate the currently used version of its source code, the exhibitors have produced a body of evidence making it possible to affirm that the disputed processing is indeed data processing that does not respect the essential content of the right to privacy and the protection of personal data, and that it constitutes, at the very least, a manifestly disproportionate infringement of these rights.
122. If the Council of State has the slightest doubt as to the disproportionate nature of the disputed processing, it could thus refer the following questions to the CJEU for a preliminary ruling:

"Does the processing of personal data, the controller of which is a public social administration entrusted with a public service mission, with the aim of establishing a risk score for each public service user in order to target the administration's checks, not disregard the essential content of the right to privacy, protected by Article 7 of the Charter, and the right to the protection of personal data, guaranteed by Article 8 of the Charter, insofar as this score is calculated not only on the personal data of each user, but also that of their spouse or children, resulting in nearly half of the French population being affected by this processing, and that the nature of the data processed relates to very specific details of their lives? In the event of a negative response, is such processing not, in any event, manifestly disproportionate within the meaning of Article 5(1)(c) of Regulation 2016/679 of 27 April 2016, read in the light of Articles 7, 8 and 52(1) of the Charter? "

B. As regards non-compliance with Article 22 of the GDPR

123. Secondly, the contested decision is unlawful in that the algorithmic processing, whose authorization for implementation the contested decision refuses to revoke, is contrary to Article 22 of the RGPD.

124. In law, as recalled above (see above, §§ 78 *et seq.*), Article 22(1) of the GDPR establishes a principle by which the data subject has *"the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her."*

125. It is only by way of exception, which must therefore be strictly interpreted, that such processing is possible. These exceptions are exhaustively listed in Article 22(2) of the GDPR, and endowed with the additional requirements set out in Article 22(3) and (4):

"2. Paragraph 1 shall not apply if the decision:

- a) *is necessary for entering into, or performance of, a contract between the data subject and a data controller;*
- b) *is authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or*
- c) *is based on the data subject's explicit consent.*

3. *In the cases referred to in points (a) and (c) of paragraph 2, the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.*

4. *Decisions referred to in paragraph 2 shall not be based on special categories of personal data referred to in Article 9(1), unless point (a) or (g) of Article 9(2) applies and suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place."*

126. Article 22(2)(b) of the GDPR provides, in particular, that domestic law may authorize such decisions. Paragraph 2(2) of Article 47 of the Data Protection Act, while reiterating the principle of the prohibition of Article 22 of the GDPR, thus provides that the following may be based exclusively on data processing:

"Individual administrative decisions taken in compliance with Article L. 311-3-1 and Chapter I of Title I of Book IV of the Code of Relations between the Public and the Administration, provided that the processing does not relate to data noted in I of Article 6 of this Law. These decisions include, on pain of nullity, the explicit mention provided for in Article L. 311-3-1 of the Code of Relations between the Public and the Administration. For these decisions, the controller ensures control of the algorithmic processing and its developments in order to be able to explain to the data subject, in detail and in an intelligible form, the way in which the processing has been implemented in their regard."

127. In addition, as previously recalled, the CJEU considers that the notion of “decision” within the meaning of Article 22 of the GDPR is an autonomous notion of EU law. There is thus a “decision” within the meaning of this article when a risk score is established by algorithmic processing, different from an “administrative decision” within the meaning of French national law (see above, § 83; CJEU, 7 December 2023, *SCHUFA Holding*, prec., pts 44-45).

128. In this case, as demonstrated above (see above, §§ 77 *et seq.*), the calculation of the risk score by the disputed processing constitutes profiling or, at the very least, automated decision-making, falling under Article 22 of the GDPR.

129. Therefore, on the one hand, there is no legal basis for the disputed algorithmic processing (see below, §§ 201 *et seq.*). In particular, consent is not collected and there is no contractual relationship with the data subjects. The exceptions in (a) or (c) of Article 22(2) cannot therefore apply to the present case.

130. On the other hand, while Article 47 of the Data Protection Act allows certain administrative decisions to be based exclusively on data processing under Article 22 of the GDPR, this exception does not relate to decisions taken within the meaning of Article 22 of the GDPR, the two concepts being different. The exception in Article 47(2)(2) cannot therefore apply to the present case. In addition, since the disputed algorithmic processing is a processing of sensitive data within the meaning of Article 9 of the GDPR and Article 6 of the Data Protection Act, this exception can also not be upheld.

131. It follows that the disputed processing seriously infringes Article 22 of the GDPR. The refusal to revoke the decision to implement it is therefore unlawful.

C. As regards the existence of indirect discrimination intrinsic to the disputed processing

132. Thirdly, the refusal to revoke the decision implementing the disputed algorithmic processing is unlawful in that this processing disregards Article 1 of Law No. 2008-496 of 27 May 2008 laying down various provisions for adapting to Community law in the field of the fight against discrimination, read in the light of Council Directive No 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Council Directive No. 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social

security and Articles 20 and 21 of the Charter, as well as Article 14 of the ECHR, insofar as it constitutes, *per se*, indirect discrimination.

133. In law, under Article 14 of the ECHR:

“The enjoyment of the rights and freedoms set forth in the European Convention on Human Rights and the Human Rights Act shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

134. In addition, according to Article 1 of Law No. 2008-496:

"Direct discrimination is a situation in which, on the basis of their origin, sex, family status, pregnancy, physical appearance, particular vulnerability resulting from their economic situation, apparent or known to the perpetrator, surname, place of residence or banking address, state of health, loss of autonomy, disability, genetic characteristics, morals, sexual orientation, gender identity, age, political opinions, trade union activities, ability to express themselves in a language other than French, membership or non-membership, real or supposed, of a given ethnic group, nation, alleged race or religion, one person is treated less favourably than another is, has been or will have been treated in a comparable situation.

Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons at a particular disadvantage compared with other persons on any of the grounds noted in the first paragraph, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are necessary and appropriate.

[...]"

135. Law 2008-496 transposes Directive 2000/43/EC into French law, which defines discrimination in Article 2(2):

“(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”

136. In addition, Directive 79/7/EEC applies the principle of equal treatment to the field of “social welfare”. Article 4(1) of this Directive specifies that:

The principle of equal treatment means that there shall be no discrimination whatsoever on ground of sex either directly, or indirectly by reference in particular to marital or family status, in particular as concerns:

- the scope of the schemes and the conditions of access thereto,*
- the obligation to contribute and the calculation of contributions,*
- the calculation of benefits including increases due in respect of a spouse and for dependents and the conditions governing the duration and retention of entitlement to benefits.*

137. Directive 2000/43 /EC and Directive 79/7/EEC constitute the practical implementation, in secondary Union legislation, of the principle of non-discrimination protected by Article 21 of the Charter, according to which:

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. *Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, [...] any discrimination on grounds of nationality shall be prohibited.*

138. It is also a concrete implementation of the principle of equality proclaimed in Article 20 of the Charter, which states that *“All persons are equal before the law.”*
139. The concept of indirect discrimination, defined by Article 2(2) of Directive 2000/43/EC, is rooted in the case law of the CJEU and the European Court of Human Rights (ECHR).
140. The essence of indirect discrimination consists of a collective situation. In the words of Professor Xavier Souvignet, quoting Professor Ségolène Barbou des Places: *“Combating stereotypes, prejudices and social representations is the goal. Indeed, the concept of indirect discrimination ‘implies that the entire national representation of the organization of the family, the education of children, and social and professional relations should be revisited’ [...]”* He adds: *“Actors and social groups, beyond their conscious and sincere convictions, act on the basis of historical, social and cultural determinations, which operate as deep mental structures”* (Xavier Souvignet, *“Le juge administratif et les discriminations indirectes”*, RFDA 2013/2, p. 315).
141. In this area of indirect discrimination, the CJEU thus held that national legislation that requires that, for the purposes of calculating the length of service of public servants, periods of employment during which the hours worked are between one-half and two-thirds of normal working hours are counted only as two-thirds of normal working hours, was likely to constitute direct discrimination since 87% of part-time workers are women (see CJEU, 2 October 1997, *Hellen Gerster*, case Case C-1/95; for comparable cases: ECJ, 10 March 2005, *Vasiliki Nikoloudi*, case C-196/02; ECJ, 6 December 2007, *Ursula Voß*, case C-300/06, on the premise that 88% of those concerned were women). The same applies to an exceptional pension increase mechanism likely to benefit 75% of male pensioners but only 43% of female pensioners (see CJEU, 20 October 2011, *Waltraud Brachner*, case C-123/10). It is necessary and sufficient that, in view of the available data, a considerably lower percentage of

workers of one of the two sexes is able to meet the condition laid down by the text, for there to be a difference in treatment see CJEC, 9 February 1999, *Regina*, case C-167/97).

142. For its part, the administrative judge opted for an *in concreto* assessment, based on reliable and significant statistical data.(cf. EC, 16 October 2017, Huchet, Nos. 383459 and 395480, ECR T. pp. 444, 638 and 744).
143. The reasoning for identifying indirect discrimination is twofold. First, it must be examined as to whether the neutral criterion complained of is itself discriminatory. Where appropriate, consideration should be given to whether the criterion is objectively justified by a legitimate aim and whether the means to achieve that aim are necessary and appropriate.
144. When classifying indirect discrimination, there is no need to look for an intentional criterion (see EC, sect., 30 October 2001, *Association française des sociétés financiers and others*, No. 204909, Rec. p. 518). The factual finding may reveal a mere presumption of discrimination, which will fall if the difference in treatment is legitimate, provided, however, that the means chosen meet a legitimate aim of social policy, are capable of achieving the objective pursued and are necessary for this purpose (see CJEC, 13 July 1989, *Rinner-Kühn*, case C-171/88).
145. The obligation not to create discrimination is combined with the obligation to prevent discriminatory effects, which is particularly acute for data controllers. Indeed, the GDPR requires the controller, in recital 71, to prevent, “*inter alia, discriminatory effects on natural persons [...] or processing that results in measures having such an effect.*” It therefore clarifies that automated decision-making and profiling based on special categories of personal data should only be allowed under specific conditions.
146. Law No. 2016-832 of 24 June 2016, aimed at combating discrimination on the grounds of social insecurity, broadened the grounds of discrimination by adding to Article 1 of Law No. 2008-496 the ground resulting from the “*particular vulnerability resulting from [the] economic situation, apparent or known to its perpetrator*”, in continuation of the Charter, which paved the way by retaining wealth and social origin as grounds for discrimination.

147. This legislative development helps to give effect to the formula proclaimed by the law on combating exclusion of 29 July 1998 and codified in Article L. 115-1 of the Code of Social Action and Families: *“the fight against poverty and exclusion is a national imperative”*. Its purpose is to sanction practices or legislation that would stigmatize and exclude people because of vulnerability resulting from their economic situation.
148. Economic vulnerability is singular in the non-discrimination landscape because it relates to a person's situation and not directly to the person. The notion of vulnerability makes it possible to go beyond the single situation of a “social inheritance”, or the level of wealth, i.e. the purely patrimonial element. However, it remains quite reductive because it only targets the poorest by considering their financial difficulties. More specifically, the reason focuses on vulnerability to financial hardship and not the financial hardship itself. In the words of Delphine Tharaud, *“It is therefore economic fragility that is taken into account, which seems to encompass a precarious situation or which may become so according to an economically unfavourable event”* (“Etude critique du motif de discrimination résultant de la vulnérabilité économique”, RDLF 2017, Chron. No. 05).
149. The doctrine emphasizes that the fact that the law specifies that economic vulnerability must be *“apparent or known to its perpetrator”* means that *“the ambition of the law [is] first [to] fight prejudices against the poor, sometimes presented as profiteers and lazy, parasites of a lavish social system”, and “unfit social cases”* (Gwénaële Calves, Diane Roman, “La discrimination à raison de la précarité sociale: progrès ou confusion?”, *Revue de droit du travail*, 2016, p. 526). This also emerges from the parliamentary work that preceded the adoption of the aforementioned law of 24 June 2016, and from which it follows that *“Poverty is already a test. It does not have to be accompanied by humiliation, stigmatization, rejection. To enshrine the criterion of discrimination on the basis of economic vulnerability in the law today would be to give back to the excluded a part of their dignity, to affirm that they have rights and that they should not be ashamed of them.”* (Michel Ménard, Rapport No. 3799 on the bill of law aimed at combating discrimination due to social insecurity, 1 June 2016, p. 8)

150. Another characteristic of economic vulnerability is that it has an intersectional dimension, i.e., it relates to multiple discriminations that constitute the epicentre of economic vulnerability. Delphine Tharaud's study insists in this regard that: "*It is no longer a question of isolating the scope of application of a reason but, on the contrary, of analysing how it feeds into another criterion.*" Economic vulnerability is thus reinforced by other parameters, for example disability, age, family situation, etc., since it is known, for example, that single-parent families experience many financial difficulties. As an illustration, Delphine Tharaud recalls that a report by the Ombudsman in 2016 showed that women with disabilities were more exposed to economic vulnerability because they suffer from dual discrimination, thus being more discriminated against than people with disabilities in general and more than women taken as a whole (Delphine Tharaud, *ibid.*).
151. In other words, because certain intrinsic characteristics of the person are sources of impoverishment (the disability that prevents the person from working or obtaining a high income, a divorce, age, to which a high rate of unemployment is linked), discrimination due to economic vulnerability intersects with other criteria, such as the number of children, family situation, place of residence, age or situation of disability. Economic vulnerability is thus explained by other criteria that form its breeding ground.
152. Consequently, the authorities must not only pay particular attention to vulnerable people and provide them with increased protection (see ECHR, 19 February 2013, *B. v. Romania (No. 2)*, No. 1285/03, § § 86 and 114; ECHR, 13 January 2009, *Todorova v. Italy*, No. 33932/06, § 75; ECHR, 21 January 2014, *Zhou v. Italy*, No. 33773/11, § 58) but, more importantly, must refrain from any practice which, by applying unfavourable treatment to people in very precarious situations, would amount to negatively discriminating against the most vulnerable.
153. In this case, the disputed processing has the effect of placing certain categories of persons covered by Law No. 2008-496 in a situation of discrimination.
154. It is recognized that the very use of algorithmic technologies carries an increased risk of using a discriminatory mechanism, due to several factors highlighted, in particular, by the Ombudsman in a report in 2020 (see Exhibit No. 16). Because it is the mathematical reflection of past

practices and behaviours that are often discriminatory, and also practices of systemic discrimination operating within society, the implementation of algorithmic processing presents a risk of reproducing and amplifying the discriminatory effects.

155. The aforementioned report of the Ombudsman therefore warns against the “False neutrality of algorithms”, and stresses that “The mobilization of apparently neutral criteria, i.e., criteria that do not fall within the prohibited grounds of discrimination, may have discriminatory effects” (*ibid.*, p. 5).
156. Regarding the disputed processing more specifically, it consists, as recalled above (see above, §§ 3 *et seq.*), of assigning a score to each beneficiary of a CAF in order to allow the targeting of checks according to that score.
157. However, the discriminatory effects of the disputed processing have been highlighted in various academic works.
158. Firstly, as early as 2016, a study by Mr. Vincent Dubois, Ms Morgane Paris and Mr. Pierre-Edouard Weill, based on data from the CNAF and with the cooperation of the latter (study now removed from the administration's website) showed the net increase in the representation of certain categories of people among over-controlled populations since the introduction of the disputed processing (see Exhibit No. 17).
159. Indeed, based on CNAF data, the authors of this study showed an increase in the difference (in percentage points) in the proportion of beneficiaries subjected to checking in certain categories since 2010, when the disputed algorithmic processing was implemented. For documentary checks, it can thus be seen that (*ibid.*, p. 208):
 - the gap among lead claimants under 30 years old increased from -3.5 in 2006 to 9.9 in 2010, 9 in 2013 and 12 in 2014;
 - the gap among student recipients increased from -6 in 2006 to 13.3 in 2010, 12.3 in 2013 and 13.9 in 2014;
 - the gap among recipients whose monthly income per unit of consumption was between 0 and 500 increased from 5.5 in 2006 to 11.8 in 2010, 12.6 in 2013 and 15.6 in 2014;

- the gap among recipients of social housing allowance (SLA) increased from -7.7 in 2006 to 3.7 in 2010, 2.9 in 2013 and 4.4 in 2014;
- the gap among recipients receiving the minimum insertion income (RMI) and then the active solidarity income (RSA) increased from 4.6 in 2006 to 7.7 in 2010, 7.6 in 2013 and 10.4 in 2014. 160. As regards on-the-spot checks, this study shows that (*ibid.*, p. 209):
 - the gap for recipients who are single parents (single-parent family) increased from 16.4 in 2006 to 18.1 in 2010, 25.2 in 2013 and 29.2 in 2014;
 - the gap in economically inactive recipients increased from 18.6 in 2006 to 18.7 in 2010, 20.7 in 2013, but above all to 26.1 in 2014 (the CNAF began to use another algorithmic model in 2014);
 - the gap among recipients whose monthly income per unit of consumption is between 0 and 500 increased from 25.1 in 2006 to 21.6 in 2010, 31.1 in 2013 and 33.6 in 2014;
 - the gap among beneficiaries of personalized housing assistance (APL) increased from 2.1 in 2006 to 2.4 in 2010, 6.8 in 2013 and 7.6 in 2016;
 - the gap among recipients of family housing allowance (ALF) increased from 6.1 in 2006 to 8.7 in 2010, 16.9 in 2013 and 17 in 2014.

161. More generally, this study highlights the existence of a “*trend towards increasingly targeting the most precarious beneficiaries, starting with those who receive the social minimum*” and the fact that “*this increase is even more marked with regard to the legal benefits paid to the most vulnerable populations*” (*ibid.*, pp. 206–207).

162. The authors of this study attribute a large proportion of these changes to the introduction of datamining checks (i.e. those triggered following an excessively high score attributed by the disputed processing) (while recalling that they are also due to the “RAC” checks, the latter being an analysis of the consistency of declared income):

“This ‘over-controlling’ can be defined as the greater likelihood of the most disadvantaged recipients being subjected to checks relative to the overall population of recipients. However, this tendency to over-control is observed in proportion to the intensity of their economic and social

difficulties. Even if there is no deliberate policy of targeting precarious populations, it is they who are, more than others, affected by these checks. Even though the dominant logic of the checks, embodied in particular by the widespread and reinforced application of data mining since the end of the 2000s, is based on the identification of 'risk factors', and not 'at risk' populations, the convergence of these factors leads to the preferential checking of populations characterized by socio-economic characteristics (absence or irregularity of employment, isolation, poverty, absence or weakness of resources other than social benefits, etc.) that distinguish them from others. Following the diachronic perspective that structures our reflection, it is possible to show that this trend towards the de facto targeting of the most disadvantaged populations has increased over the period studied.

163. Secondly, in 2021, Mr. Vincent Dubois reaffirmed, based on his previous work, that the introduction of datamining checks has contributed to the an exacerbation of over-control among certain categories of people. He explained as follows (see Exhibit No. 18, p. 418):

“Technically, the triggering of checks by datamining is not based on social characteristics but on 'risk factors', and does not identify specific individuals or groups but files. However, this targeting method is not socially neutral. The 'risk factors' are not actually distributed randomly, if only because the criteria and methods of allocation vary according to the benefits, and the beneficiaries of these are socially and economically differentiated. The family allowances received by almost all households with more than two children require very few steps, and a declaration of resources only annually. The RSA is subject to multiple criteria, and involves declaring resources quarterly. Without even mentioning the differences in the beneficiaries' living conditions, or a possible variation in their level of probity, the administration of the RSA therefore mechanically exposes a much higher probability of errors, omissions and delays in the beneficiaries' declarations, which are all 'risks'. The preferential focusing of checks on the most precarious

beneficiaries is therefore not a choice that should be assumed as such, but the result of the measures implemented.

As one local control officer says, "I don't have to say I'm going to select 500 RSA beneficiaries, I don't do it, the system does it! [Laughs]."

164. In short, the more complex and unstable the situation, the more elements to declare, and this mechanically results in a potential for greater errors. And the result is over-control of people in economic insecurity.

165. The implementation of the disputed processing therefore leads to certain people in a situation of economic insecurity, in particular people receiving welfare benefits (APL, ALF, and especially RSA), those on low incomes and those who are economically inactive, having a higher probability of being subject to checks from their local CAF. This is discrimination because of people's economic status.

166. The implementation of the disputed processing likewise results in a higher likelihood of single-parent families being subject to greater control. To the extent that the overwhelming majority (95%) of single-parent families in receipt of benefits are single mothers (*ibid.*, p. 416), this is discrimination on the basis of marital status and gender.

167. However, such discrimination is not objectively justified by a legitimate aim. Indeed, in his 2020 study, Mr. Vincent Dubois notes, based on the 2014 figures of the CNAF, that the checks of people thus discriminated against by the disputed processing will be less likely to reveal the existence of an overpayment: *"Home checks may thus establish overpayments more frequently among the economically active (50.4%) and couples with children (45.6%) than among the economically inactive (34.7%) and single mothers (33.1%)"* (*ibid.*, p. 419).

168. He recalls that the supposed effectiveness of checks based on datamining, which it would be tempting to attribute to the fact that a large proportion of overpayments come from people benefiting from minimum welfare payments, constitutes a false impression and must rather be attributed to the overrepresentation of these people among the populations subject to said checks (*ibid.*, p. 419):

"It is therefore possible to consider that the over-representation of overpayments and fraud among beneficiaries on the minimum social welfare is partly the product of their over-control, in addition to the effects of the multiplication of sources and opportunities for errors

induced by more numerous criteria and more frequent declarations than for other types of allowances. Moreover, it is not always the checks of the most precarious recipients that reveal the highest rate of anomalies. The fact remains that, over-controlled, the most precarious recipients are also those most exposed to sanctions.”

169. Finally, as previously pointed out, it appears from the CNAF's statistics that the effectiveness of checks based on datamining has not been established (see above, §§ 110 *et seq.*).

170. It follows that the disputed processing constitutes indirect discrimination on the basis of gender, family situation and particular vulnerability resulting from the economic situation of the beneficiaries of a CAF. The refusal to revoke the decision implementing this algorithmic processing is therefore unlawful.

171. If it were to entertain the slightest doubt as to the discriminatory nature of the disputed processing, the Council of State could thus refer the following question to the CJEU for a preliminary ruling:

"Does the processing of personal data, the controller of which is a public social administration entrusted with a public service mission, with the purpose of establishing a risk score for each public service user in order to target the administration's checks, not constitute indirect discrimination within the meaning of Directive 2000/43/EC of 29 June 2000 and Council Directive 79/7/EEC of 19 December 1978, read in the light of Articles 20 and 21 of the Charter, insofar as the introduction of this processing has resulted in a significant increase in checks on persons under 30 years of age, students, those on low incomes, the economically inactive, those raising a child alone (95% of whom are women), or those receiving social assistance?"

D. In the alternative, as regards direct discrimination resulting from the application of certain criteria

172. Fourthly, and in the alternative, the refusal to revoke the decision implementing the disputed processing is unlawful in that it is in violation of Article 1(1) of Law No. 2008-496, read in the light of Directive

2000/43/EC, Directive No 79/7 /EEC and Articles 20 and 21 of the Charter, as well as Article 14 of the ECHR, insofar as it directly discriminates.

173. In law, the notion of direct discrimination is a situation in which two persons or groups of persons, placed in similar situations, have been treated differently, in an area covered by the law, on the basis of an unlawful criterion.

174. Thus, according to Article 1(1) of Law No. 2008-496:

“Direct discrimination is any situation in which, on the basis of origin, sex, marital status, pregnancy, physical appearance, particular vulnerability resulting from one's economic situation, apparent or known to the perpetrator, surname, place of residence or bank address, state of health, loss of autonomy, disability, genetic characteristics, moral character, sexual orientation, gender identity, age, political opinions, trade union activities, ability to express oneself in a language other than French, actual or assumed membership or non-membership of a particular ethnic group, nation, alleged race or religion, a person is treated less favourably than another is, has been or will be treated in a comparable situation.”

175. This is the transposition of the principle of non-discrimination of Directive 2000/43/EC, Directive 79/7 /EEC and Article 21 of the Charter. Article 14 of the ECHR also takes up this principle. It is also a concrete implementation of the principle of equality enshrined in Article 20 of the Charter.

176. When it comes to proving direct discrimination, the administrative judge uses a three-stage dialectic of proof, in which a number of elements are enough to give rise to a presumption of discrimination.

177. First, it is up to the applicant who considers themselves aggrieved to submit elements of fact likely to lead to the presumption of an infringement of the principle of equal treatment of persons to the judge. It is then up to the defendant to demonstrate that the contested decision is based on objective elements unrelated to any discrimination. Finally,

the judge forms an opinion in the light of these contradictory exchanges and, if necessary, any investigative measures they may deem useful.

178. In this case, algorithmic processing creates direct discrimination by establishing certain variables relating to categories prohibited by Law No. 2008496 as criteria that significantly worsen the score.

179. In the 2010 and 2014 versions (see Exhibit No. 12), the variables associated with the highest odds ratio, i.e. those that caused the score to change most significantly upwards, were:

- having a household with children over the age of 12;
- receiving the adult disability allowance (AAH) that is declared quarterly (which corresponds to the case of an employee and AAH beneficiary);
- devoting a large part of their resources to financing their housing;
- having a low income per consumption unit;
- having an unstable income;
- having benefited from the RSA for more than thirteen months;
- having been economically inactive for the last twelve months¹²;
- frequently changing address;
- a change in family situation over the last 18 months, and even more so for single-parent families composed of a widowed, divorced or separated person.

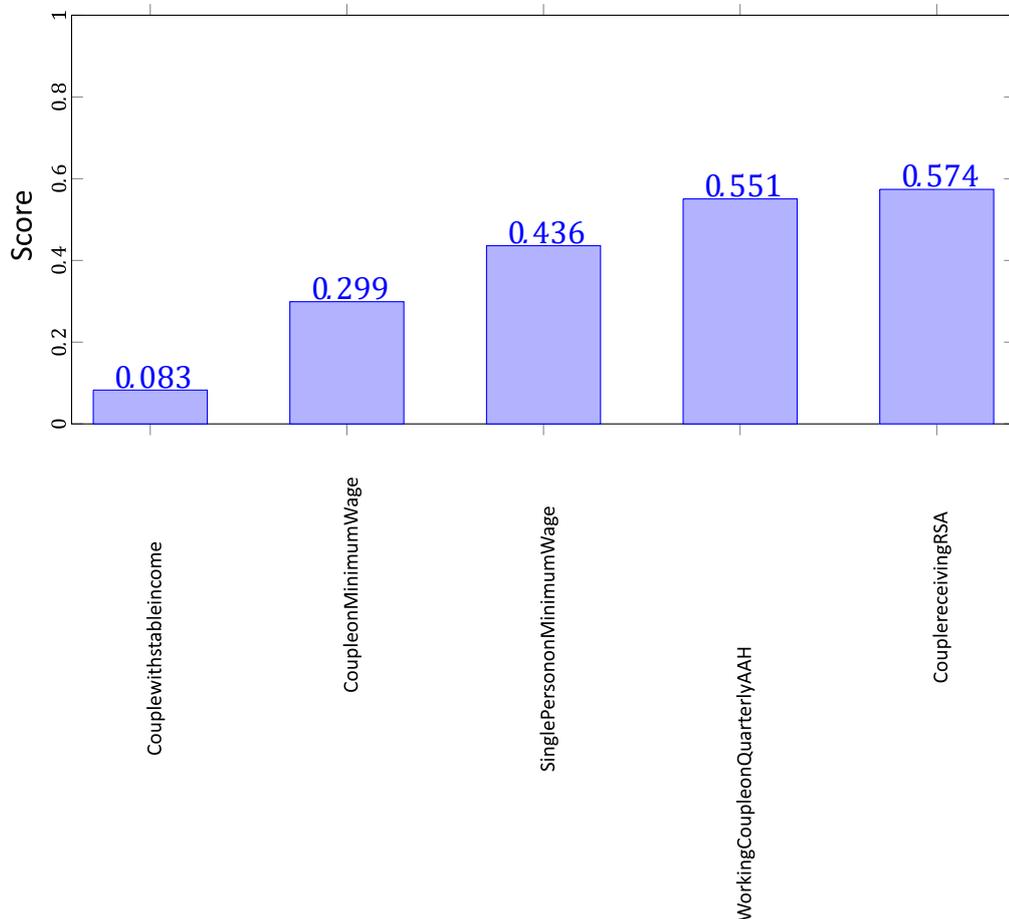
180. Specifically, factors that increase the score include having a low income, being unemployed, being a beneficiary of the RSA, devoting a significant part of your income to your rent, having an unstable income, or even benefiting from the AAH while working, the latter being one of the parameters that has the strongest impact on the score.

181. The score thus calculated by the disputed processing relates less to the behaviour of the beneficiaries than to the nature of their benefits and their intrinsic qualities (age, disability situation, family situation, economic situation). In other words, the risk factors (i.e. the criteria that increase the score the most) are

¹². The CNAF refers to this factor as the “*number of months in activity over a 12-month period (lead claimant and spouse)*” but the source code seems to show that this is not INSEE’s definition of “active” / “inactive” but rather whether the person has a paid activity such as salaried work.

actually factors of precariousness, such that it is the most insecure people who will be subject to more checks, amplifying the discriminatory effect.

182. Using the source code for the 2014 model of the disputed processing, La Quadrature du Net simulated certain situations:



183. Even if this simulation suffers from certain limitations insofar as assumptions had to be made to establish the profiles of the beneficiaries whose situation was being simulated, it remains consistent with the overall empirical findings made on the basis of the CNAF figures (see above, §§ 132 *et seq.*).

184. Firstly, it can be seen that the disputed processing directly uses a criterion relating to people's disability to increase the score. Indeed, the AAH variable declared quarterly is associated with an odds ratio of 1.90. The beneficiaries of the AAH who are declaring their resources quarterly are those with salaried activity. This results in a flagrant inequality between the situation of an able-bodied person and a disabled worker.

185. In that the algorithmic processing takes into account, among its criteria, the fact of benefiting from the AAH and therefore of being in a situation of disability, it

establishes the status of disabled worker as a criterion that markedly worsens the score, giving rise to direct discrimination against disabled workers.

186. Secondly, the algorithmic processing directly discriminates by setting age as a criterion that significantly worsens the suspicion score.

187. The algorithmic model established in 2014 provides for two variables based exclusively on age: the age of the lead claimant (the odds ratio for people under 34 is 1.13) and the age of the spouse (being over 60 corresponds to an odds ratio of 1.37).

188. A beneficiary under the age of 34 is therefore treated unfavourably compared to a beneficiary over the age of 34. Similarly, a recipient whose spouse is over 60 years of age is treated unfavourably compared to a recipient whose spouse is under 60 years of age.

189. In that it worsens the age score of the recipient or spouse, algorithmic processing thus results in direct age discrimination.

190. Thirdly, the disputed processing directly discriminates by using the family situation as a criterion that markedly worsens the suspicion score.

191. The 2014 version of the disputed processing provides for three sets of variables based exclusively on marital status:

- The presence in the home of children aged 12 to 18. An odds ratio of 1.1 is given to a situation where such children make up the household). The presence of children over 19 years of age in the household results in an odds ratio of 1.55)
- Marital status in the last 18 months. The situation of a person married without change in the last 18 months is associated with an odds ratio of 1.06. The presence of two situational changes in the last 18 months is associated with an odds ratio of 1.31. The situation of a person who has been widowed, divorced or separated during the last 18 months is associated with an odds ratio of 1.85. Households that have become single parents in the last 18 months thus fall into the latter category.

192. The algorithmic processing therefore worsens the score according to the situation of the family and according to the change in the latter's situation over the last 18 months. Parents with children aged 12 to 19 are treated more unfavourably

than people without children in their homes. People who have been widowed, divorced or separated in the last 18 months are more likely to be associated with a high score than people who are married or in a marital relationship.

193. The discriminating effect of these variables is confirmed by the modelling carried out by Lighthouse Reports, which worked with the newspaper Le Monde to analyse the source code of the disputed algorithmic processing (see Exhibit No. 19). For example, Lighthouse Reports models show that the score of a father or mother divorced in the last 18 months and on a low income will average 0.66 (Lighthouse Reports estimates that the threshold at which the score is at a check level is around 0.60).

194. In that it worsens the score according to the family situation or any changes therein, the algorithmic processing directly discriminates by family situation.

195. Fourthly, algorithmic processing directly discriminates against women.

196. As noted above (see above, § 166), single-parent families who are CNAF beneficiaries are overwhelmingly female (95% of single-parent households in 2014 were made up of a single mother). This finding comes from the CNAF's own data, and precludes the administration from ignoring this characteristic in its beneficiaries.

197. However, by using variables such as a change in family situation, including divorce, algorithmic processing directly targets single mothers, thus constituting discrimination on the basis of sex.

198. It is not, in particular, necessary for the algorithmic processing to explicitly include a "single mother" variable to constitute direct discrimination on the basis of sex, given that a single-parent household will almost always be composed of a single mother. It is thus the great similarity between "single-mother beneficiaries" and "single-parent households" that means this proxy variable directly discriminates on the basis of sex.

199. In that it exacerbates the situation of women, the use of a variable relating to the existence of divorce has the consequence of the disputed processing directly discriminating on the basis of sex, insofar as single-parent households benefiting from a CAF are almost all composed of single mothers.

200. It follows that, in any case, the disputed processing directly discriminates against certain categories of persons prohibited by Article 1 of Law No. 2008-496. Consequently, the contested decision refusing to revoke the implementation of the disputed processing is unlawful.

E. In the further alternative, as regards the lack of a legal basis

201. Fifthly, in the further alternative, the refusal to revoke the implementation of the disputed processing is unlawful in that it violates Article 8 of the ECHR, Articles 4 and 5 of the Data Protection Act and Articles 5 and 6 of the GDPR.
202. In law, as previously recalled, Article 8 of the ECHR proclaims the right to privacy and requires that any infringement of this right be “in accordance with the law” and “necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”
203. The ECHR thus considered that the interference must have “a basis in domestic law”, be “adequately accessible”, the citizen must “be able to have an indication that is adequate, in the circumstances, of the legal rules applicable to a given case” and, finally that a standard can only be considered a law within the meaning of the ECHR when “formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail” (see ECHR, 25 March 1983, *Silver and Others v. the United Kingdom*, No. 5947/72, §§ 85–88).
204. Similarly, it was held that:

“The expression ‘in accordance with the law’ requires, firstly, that the impugned measure should have some basis in domestic law. Secondly, it refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and compatible with the rule of law [...] The phrase thus implies, inter alia, that domestic law must be sufficiently foreseeable in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which the authorities are entitled to resort to measures affecting their rights

under the Convention” (see ECHR, 12 June 2014, Fernandez Martinez v. Spain, No. 56030/07, § 117)

205. It was thus sufficient for the European Court to find that the contested measure was not provided for by law in order to conclude that there had been a violation of Article 8 of the Convention (see ECHR, 8 April 2003, *M.M. v. The Netherlands*, No. 39339/98, § 46; see also to this effect: ECHR, *Guide on Article 8 of the Convention - Right to respect for private and family life*, § 14).
206. It follows that any interference with the private life of individuals must be based on a clear and precise legal framework, sufficiently accessible, allowing the citizen to have sufficient information on the legal standards applicable to a given case.
207. This requirement of the ECHR is taken up in substance by Articles 5 and 6 of the GDPR.
208. According to Article 5(1)(a) of the GDPR, personal data must be “*processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency’)*”.
209. The definition of lawfulness is given in Article 6 of the GDPR, which states:

“1. Processing shall be lawful only if and to the extent that at least one of the following applies:

- a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;*
- b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;*
- c) processing is necessary for compliance with a legal obligation to which the controller is subject;*
- d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;*

e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.

2. Member States may maintain or introduce more specific provisions to adapt the application of the rules of this Regulation with regard to processing for compliance with points (c) and (e) of paragraph 1 by determining more precisely specific requirements for the processing and other measures to ensure lawful and fair processing including for other specific processing situations as provided for in Chapter IX.

3. The basis for the processing referred to in point (c) and (e) of paragraph 1 shall be laid down by:

a) Union law; or

b) Member State law to which the controller is subject.

The purpose of the processing shall be determined in that legal basis or, as regards the processing referred to in point (e) of paragraph 1, shall be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. That legal basis may contain specific provisions to adapt the application of rules of this Regulation, inter alia: the general conditions governing the lawfulness of processing by the controller; the types of data which are subject to the processing; the data subjects concerned; the entities to, and the purposes for which, the personal data may be disclosed; the purpose limitation; storage periods; and processing operations and processing procedures, including measures to ensure lawful and fair processing such as those for other specific processing

situations as provided for in Chapter IX. The Union or the Member State law shall meet an objective of public interest and be proportionate to the legitimate aim pursued.

[...]"

210. The Data Protection Act repeats these same conditions of lawfulness. According to Article 4(1) of the Data Protection Act, personal data must be “*processed in a lawful, fair and, for processing under Heading II, transparent manner with regard to the data subject*” and Article 5 of the same Act repeats the six bases provided for in Article 6(1) of the GDPR.

211. It is clear from Article 6(3) of the GDPR that certain legal bases in Article 6(1) cannot be invoked directly by the controller. Indeed, the purpose of compliance with a legal obligation (Article 6(1)(c)) or the performance of a public service mission vested in the controller (Article 6(1)(e)) must be specified by Union or national law.

212. By way of illustration, the Orléans Administrative Court recently considered that an algorithmic audio surveillance system (i.e. one that analyses sounds in order to guide video surveillance cameras in the event of an abnormal situation) was unlawful due to the processing of personal data without a legal basis (see Orléans AC, 12 July 2024, *La Quadrature du Net*, No. 2104478). The Council of State and the Paris Administrative Court also considered that the use of drones for law enforcement purposes constituted unlawful processing of personal data due to the lack of a legal basis (see CE, Ord., 18 May 2020, *La Quadrature du net et al.*, Nos. 440442, 440445; CE, 22 December 2020, No. 446155, Rec. T. p. 750; Paris AC, 28 June 2022, *La Quadrature du Net*, No. 2017440). If these decisions relate to data processing that falls within the scope of the “Law Enforcement” directive, their principle remains, *mutatis mutandis*, applicable to processing under the GDPR.

213. In the present case, there is no legal basis for the disputed algorithmic processing.

214. On the one hand, in a press release of January 2022, the CNAF specified the implementation of the disputed algorithmic processing in application of Article 6(1)(c) of the GDPR, supplemented by Articles L. 114-9 and L. 114-10 of the Social Security Code as well as Decree No. 2013-917 of 14 October 2013 on internal checks on compulsory basic social security schemes (see Exhibit No. 6, p. 1), which corresponds to Article D. 114-4-6 of the Social Security Code.

215. However, Articles L. 114-9, L. 114-10 and D. 114-4-6 of the Social Security Code limit themselves to specifying that the CNAF is responsible for monitoring the proper allocation of the social benefits it grants; they do not specify in any way that the public authority may implement data processing for this purpose.

216. Moreover, nor can the CNIL's decision No. 2010-086 of 25 March 2010 (see Exhibit No. 13) be considered a legal basis: not only does this decision not relate to the latest version of the disputed processing (the purposes of the processing are not the same between this decision and today, see Exhibit No. 6; the data processed changed in 2014 and 2018, see Exhibit No. 12) but, furthermore, such a decision has been devoid of any effect since the entry into force of the GDPR.

217. On the other hand, no other legal basis as given in Article 6(1) of the GDPR can be advanced in the present case. Consent is not sought from the data subjects. There is no contractual relationship between the CNAF and the data subjects. The targeting of checks is not intended to safeguard the vital interests of data subjects or any other natural person. The targeting of checks is also not a public interest mission. Finally, legitimate interest cannot constitute a legal basis for a public authority in the exercise of its tasks in accordance with the last paragraph of Article 6(1) of the GDPR.

218. It follows that the disputed algorithmic processing is unlawful in that it lacks any legal basis. The same therefore applies to the Director of the CNAF's refusal to revoke the decision to implement this processing.

V. In the even further alternative, on external unlawfulness

219. In sixth place, in the even further alternative, the contested decision infringes Articles L. 211-2 and L. 232-4 of the Code of Relations between the Public and the Administration in that it does not state the reasons on which it is based.

220. In law, it follows from Article L. 211-2 of the Code of Relations between the Public and the Administration that:

"Natural or legal persons have the right to be informed without delay of the reasons for unfavourable individual administrative decisions concerning them.

To this end, reasons must be given for decisions that:

- 1. Restrict the exercise of individual freedoms or constitute a police measure;*
- 2. Impose a penalty;*
- 3. Make the granting of authorization subject to restrictive conditions or impose constraints;*
- 4. Withdraw or revoke a decision creating rights;*
- 5. Invoke a statute of limitations, foreclosure or forfeiture;*
- 6. Refuse an advantage, the award of which is a matter of entitlement for persons fulfilling the statutory conditions for its acquisition;*
- 7. Refuse an authorization, except when the communication of reasons could be likely to undermine one of the secrets or interests protected by the provisions of 2(a) to (f) of Article L. 311-5;*
- 8. Reject an administrative appeal whose submission is mandatory prior to any contentious appeal pursuant to a legislative or regulatory provision.”*

221. In addition, according to Article L. 232-4 of the Code of Relations between the Public and the Administration:

“An implicit decision taken in cases where the explicit decision should have been justified is not unlawful simply because it is not accompanied by this justification.

However, at the request of the person concerned, made within the time limits given for appeal, the reasons for any implicit rejection decision must be communicated within one month of this request. In this case, the time limit for appealing against said decision is extended until expiry of two months following the day on which the reasons are communicated.”

222. In this case, following the implicit decision, arising on 16 September 2024 and as revealed in various documents and communications, rejecting the request to revoke the decision to implement data processing aimed at establishing a risk score for each beneficiary with a view to targeting the checks of the CAF, on 10 October 2024 the applicants requested the reasons for this. This request was received by the CNAF on 14 October, and had not received a favorable response as of the date this application was lodged (see Exhibit No. 20).

223. It follows that the contested decision is unlawful in that the reasons for it were not stated following a request from the applicants.

* *

*

224. In all respects, the contested decision must be revoked. The revocation of the contested decision must result in an injunction against the CNAF to stop them implementing the data processing aimed at establishing a risk score for each beneficiary with a view to targeting the checks of the CAF and for them to delete the data resulting from this processing, in particular the calculated risk scores and the statistical data produced on the basis of these scores, under penalty of EUR 1,024 per day of delay from the pronouncement of the forthcoming decision.

VI. On the application of Article L. 761-1 of the Code of Administrative Justice

225. Given the costs they were forced to incur in defending their interests in these proceedings, the applicants request that a sum of EUR 1,024 per applicant be charged to the CNAF, under Article L. 761-1 of the Code of Administrative Justice.

FOR THESE REASONS, the associations La Quadrature du Net, AADJAM, Aequitaz, Amnesty International France, ANAS, APF France handicap, Collectif Changer de Cap, the Fondation Abbé Pierre pour le logement des défavorisés, the associations Gisti, Le Mouton numérique, Ligue des droits de l’Homme, MNCP, MRFB, Collectif National Droits de l’Homme Romeurope, and the Syndicat des avocats de France, applicants, conclude that the Council of State should:

— FIRST AND FOREMOST:

ANNUL the contested decision, with all legal consequences;

DIRECT the CNAF to stop using a scoring process to establish a risk score for each beneficiary in order to target the checks of the Family Allowance Funds, subject to a penalty of EUR 1,024 per day of delay from the pronouncement of the forthcoming decision;

DIRECT the CNAF to delete the data processed by its scoring system aimed at establishing a risk score for each beneficiary in order to target the checks of the Family Allowance Funds, in particular the scores already calculated and the statistical data, subject to a penalty of EUR 1,024 per day of delay from the pronouncement of the forthcoming decision;

— SECONDARILY:

REFER the following questions to the Court of Justice of the European Union for a preliminary ruling:

“Does the processing of personal data, the controller of which is a public social administration entrusted with a public service mission, with the purpose of establishing a risk score for each public service user in order to target the administration's checks, not fall within the scope of Article 22 of Regulation No. 2016/679 of 27 April 2016 insofar as the risk score is calculated for each user and the check on the user is directly dependent on the value of the score, in particular because of a threshold beyond which the score determines the user's inclusion on a list of persons to be checked?”

“Does the processing of personal data, the controller of which is a public social administration entrusted with a public service mission, with the aim of establishing a risk score for each public service user in order to target the administration's checks, not disregard the essential content of the right to privacy, protected by Article 7 of the Charter, and the right to the protection of personal data, guaranteed by Article 8 of the Charter, insofar as this score is calculated not only on the personal data of each user, but also that of their spouse or children, resulting in nearly half of the French population being affected by this processing, and that the nature of the data processed relates to very specific details of their lives? In the event of a negative response, is such processing not, in any event, manifestly disproportionate within

the meaning of Article 5 1)(c) of Regulation 2016/679 of 27 April 2016, read in the light of Articles 7, 8 and 52(1) of the Charter?”

“Does the processing of personal data, the controller of which is a public social administration entrusted with a public service mission, with the purpose of establishing a risk score for each public service user in order to target the administration's checks, not constitute indirect discrimination within the meaning of Directive 2000/43/ EC of 29 June 2000 and Council Directive 79/7/EEC of 19 December 1978, read in the light of Articles 20 and 21 of the Charter, insofar as the introduction of this processing has resulted in a significant increase in checks on persons under 30 years of age, students, those on low incomes, the economically inactive, those raising a child alone (95% of whom are women), or those receiving social assistance?” PENDING the Court's answer to these questions, to STAY the proceedings.

— IN ANY EVENT:

To CHARGE the CNAF the sum of EUR 1,024 per applicant, pursuant to Article L. 761-1 of the Code of Administrative Justice.

Executed in Paris, 15 October 2024

Alexis FITZJEAN Ó COBHTHAIGH
Lawyer at the Paris Bar

LIST OF EXHIBITS

Exhibit No. 1: Statutes;

Exhibit No. 2: Powers;

Exhibit No. 3: Request for revocation of the decision, revealed by various documents and communications, to implement data processing to establish a risk score for each beneficiary with a view to targeting the checks of the Family Allowance Funds (CAF);

Exhibit No. 4: Acknowledgement of receipt by the CNAF;

Exhibit No. 5: CNAF, *Rapport d'activité 2023 de la branche Famille de la Sécurité sociale*, 15 July 2024, URL: <https://www.caf.fr/professionnels/presse/publications/rapport-d-activite-tous-les-chiffres-cles-et-les-temps-forts-2023-des-caf-et-de-la-cnaf-sont-sur>;

Exhibit No. 6: CNAF press release of 27 January 2022, "Assistance in determining beneficiary files requiring verification using a data mining process", URL: https://www.caf.fr/sites/default/files/medias/cnaf/DCOM/mentions_legales/informatique_libertes/Communique-Datamining-score.pdf;

Exhibit No. 7: Letter from the CNAF to the CADA dated 7 December 2022 in the context of Referral No. 20226179; URL: https://git.laquadrature.net/la-quadrature-du-net/algo-et-controle/caf/-/raw/main/documents_caf/mails_demands_cada_lqdn_caf/courrier_caf_cada_observations.pdf;

Exhibit No. 8: CADA Opinion No. 20226179 of 15 December 2022, *National Family Allowances Fund (CNAF)*, URL: <https://www.cada.fr/20226179-0>;

Exhibit No. 9: CNAF letter accompanying the partial communication of old versions of the source code for the algorithmic processing, URL: https://git.laquadrature.net/la-quadrature-du-net/algo-et-controle/caf/-/raw/main/documents_caf/courriers_demands_cada_lqdn_caf/LQDN_cnaf_r%C3%A9ponse_08_03_2023.pdf;

Exhibit No. 10: Manual for the 2018 Model, URL: <https://www.documentcloud.org/documents/24177825-datamining-data-entrantes-documentation-technique>;

Exhibit No. 11: Pierre Collinet, "Focus – Le data mining dans les Caf: une réalité, des perspectives", *Informations sociales* 2013/4, no. 178, pp 129 to 132, URL: <https://shs.cairn.info/revue-informations-sociales-2013-4-page-129?lang=fr>;

Exhibit No. 12: List of variables and their odds ratios used in the 2010 and 2014 versions of the disputed processing;

Exhibit No. 13: Resolution No. 2010-086 of 25 March 2010 of the CNIL authorizing the National Family Allowance Fund (CNAF) to implement the processing of personal data for the purpose of improving the targeting of beneficiary accounts to be checked by the Family Allowance Funds (CAF);

URL: <https://www.legifrance.gouv.fr/cni>
<https://www.legifrance.gouv.fr/cnil/id/CNILTEXT000022205702/id/CNILTEXT000022205702>;

Exhibit No. 14: CNAF, Bilan 2019 – Prévention et lutte contre la fraude aux prestations légales, URL : <https://git.laquadrature.net/la-quadrature-du-net/algo-et-control> e/caf/-
[/raw/main/documents_caf/Bilans%20annuels%20sur%20la%20fraud](https://git.laquadrature.net/la-quadrature-du-net/algo-et-control) e/CNAF_2019.pdf;

Exhibit No.15: CNAF, Bilan 2021 – Prévention et lutte contre la fraude aux prestations légales, URL: <https://git.laquadrature.net/la-quadrature-du-net/algo-et-control> e/caf/-
[/raw/main/documents_caf/Bilans%20annuels%20sur%20la%20fraud](https://git.laquadrature.net/la-quadrature-du-net/algo-et-control) e/CNAF_2021.pdf;

Exhibit No. 16: Ombudsman, “Algorithmes: prévenir l’automatisation des discriminations”, 2020, URL: https://www.defenseurdesdroits.fr/sites/default/files/2023-07/ddd_rapport_algorithmes_2020_20200531.pdf;

Exhibit No. 17: Vincent Dubois, Morgane Paris, Pierre-Edouard Weill, “Politique de contrôle et lutte contre la fraude dans la branche Famille”, University of Strasbourg, Laboratoire SAGE (UMR CNRS 7363), Dossier d’étude, no. 183 CNAF, 2016, URL: https://web.archive.org/web/20240101130022/https://www.caf.fr/sites/default/files/medias/cnaf/Nous_connaître/Recherche_et_statistiques/Dossiers%20d'%C3%A9tudes/2016_DE_183_Contrôle_fraude.pdf;

Exhibit No. 18: Vincent Dubois, *Contrôler les assistés – Genèses et usages d’un mot d’ordre*, 2021, 456 pages (chapter 10: pp 405 to 444);

Exhibit No. 19: Manon Romain, Adrien Senecat, Soizic Pénicaud, Gabriel Geiger, Justin-Casimir Braun, “How We Investigated France’s Mass Profiling Machine”, 4 December 2023, URL: <https://www.lighthousereports.com/methodology/how-we-investigated-frances-mass-profiling-machine/>;

Exhibit No. 20: Request for communication of the reasons for the contested decision.

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