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CNIX2206882V Deliberation n° 2021-141 of November 25, 2021 providing an opinion on a draft decree in Council of State

relating to the conditions of processing and storage of personal data allowing access to personal origins (request for opinion

no. 21014165) The National Commission for Computing and Liberties, Seized by the Minister for Solidarity and Health of a

request for an opinion on a draft decree in Council of State relating to the conditions of processing and storage of personal

data allowing access to personal origins; Having regard to Regulation (EU) 2016/679 of the European Parliament and of the

Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free

movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR); Considering the

code of social action and families, in particular its articles L. 147-1 and s. and R. 147-1 et seq. ; Considering the law n° 78-17

of January 6, 1978 modified relating to data processing, files and freedoms; After having heard Mr. Philippe GOSSELIN

Commissioner, in his report, and Mr. Benjamin TOUZANNE, Government Commissioner, in his observations, Being reminded

of the following contextual elements: The National Council for Access to Personal Origins (hereinafter the "CNAOP") was

created by articles L. 147-1 and following of the code of social action and families (CASF), to facilitate access to the personal

origins of children who do not know the identity of their birth parents (children born in secret of the identity of the birth parents

and having been adopted or having remained pupils of the State until their majority). To this end, it plays an active role in the

management of requests and declarations made by the children concerned, their birth parents, their ascendants, descendants

and privileged collaterals. The CNAOP is responsible for receiving: requests for access to knowledge of the origins formulated

by the child, his legal representative or his adult descendants in direct line (if he is deceased); the authorizations to lift the

secrecy of the mother or father at birth; the "identity declarations" formulated by their ascendants, descendants and privileged

collaterals; the requests of the birth father or mother inquiring about their possible search by the child. He is also responsible

for collecting copies of the elements relating to the identity of the birth parents as well as any information left by the mother

concerning their health, the origins of the child, the reasons and circumstances for the handing over of the child to the child

welfare service or to an authorized body or authorized for adoption. Law No. 2021-1017 of August 2, 2021 relating to bioethics

has given the CNAOP a new competence, that of informing children, fathers and birth mothers via health professionals that a

genetic disease has been diagnosed in one of them and may affect them. The Ministry specified that the procedures for

collecting the personal information necessary for the exercise of this new competence would be specified in a subsequent decree. Under Article R. 147-27 of the CASF, the CNAOP has been authorized, since its creation, to use automated processing of personal data for the purpose of ensuring the storage and monitoring of requests for access to knowledge of his or her origins made by the child as well as declarations made in particular by the birth parents, their privileged ascendants, descendants and collaterals. This processing is also intended to establish anonymous statistics on its activity. It is in this context that the National Commission for Computing and Liberties was seized by the Ministry of Solidarity and Health (hereinafter the Ministry), on the basis of Article L. 147-11 of the CASF, a request for an opinion on a draft decree in Council of State relating to the conditions of processing and storage of personal data allowing the access to personal origins. Formulates the following observations concerning the draft text: Concerning the general structure of the draft text Draft article R. 147-25 of the CASF authorizes the CNAOP to implement the processing of personal data personnel referred to as "Personal origins" ("ORPER"), for which he is responsible, to carry out the tasks assigned to him in terms of access to personal origins. In this respect, the Commission considers that "ORPER" processing is, according to writing act of the draft decree and by application of the provisions of article 6-1-c) of the GDPR, necessary for compliance with a legal obligation. It also considers that this processing pursues a specific, explicit and legitimate purpose in accordance with the requirements of Article 5-1-b) of the GDPR. The Commission considers that the collection by the CNAOP, in the "ORPER" processing, of data of a personal nature on the birth parents - sometimes highly sensitive such as religious beliefs, alleged racial origin or ethnic origin, health -, as long as it is carried out in strict compliance with the requirements of the CASF and that it is based on the provisions of Article 9-2-g) of the GDPR, complies with the principle of minimization referred to in Article 5-1-c) of the GDPR insofar as these data meet the purpose of offer the child the possibility of lifting the secret of his birth or at least of building himself psychically in a family history. the principle according to which the files compiled by the CNA OP and closed for a reason other than its incompetence are kept in the "ORPER" processing on an active basis, i.e. for a period of five years if their closure is final (eg. : lifting of secrecy), or for a period of ten years if their closure is temporary (e.g. impossibility of identifying the birth parents). The files are then transferred to the Ministry responsible for the family, which ensures their conservation in intermediate archiving in accordance with the provisions of Article R. 212-11 of the Heritage Code, for a period of fifty years from their closure. At the end of this period, they are destroyed. file. The ministry specified that it referred to the practices currently observed among people seeking their personal origins to justify the extension of the retention period for files. He indicated that these people, in

particular in the event that they do not have access to their personal origins, then express the need to contact the CNAOP at regular intervals either to request a reopening of their file, or to request information from various nature and have answers to their questions concerning their origins. In this context, the Commission considers that the personal data collected in the "ORPER" processing are kept for a period not exceeding the period necessary for the purposes for which they are collected and processed, in accordance with the provisions of Article 5-1-e) of the GDPR. Makes the following observations as to the conditions for implementing "ORPER" processing: Concerning the structuring of "ORPER" processing: Projects for article R. 147-26 and R. 147-27 of the CASF structure the "ORPER" processing, distinguishing between two categories of operations: the digital recording of information personal ions generating the opening of a file with the CNAOP such as the child's access request, the declaration of identity of the birth parents, the information necessary for the follow-up and the instruction of the file including the CNAOP is the recipient; the digital referral of the information considered necessary for the follow-up and investigation of a file opened with the CNAOP. For each of these operations, different methods of storing the personal data collected are provided for. Thus, the data used to allow the opening of a file can be kept in duplicate, on digital support and on "paper" support. To justify this structuring and the storage methods associated with it, the Ministry specified that it does not always seem appropriate to formalize in a digital medium the first acts of investigation carried out and transcribed exclusively on paper, in particular with regard to the plurality of avenues explored. He pointed out, on the one hand, that this practice made it possible to retrace the exhaustiveness of the research carried out - even though certain leads were discarded at the end of the investigation - and, on the other hand, that the media used were complementary. Without calling into question, at the operational level, the merits of this structure and the need to ensure the traceability of all the research carried out and the first acts of investigation carried out, the Commission draws the attention of the Ministry to the interest in making CNAOP staff aware of the retention of only relevant personal data, in order to guarantee compliance with the principle of minimization set out in Article 5-1-c) of the GDPR. In this regard, the Commission asks what personal data such as lists containing the identities of several potential birth parents, which would later become useless - because after instruction they are not affected by the access ouche in secrecy at the origin of the referral to the CNAOP -, are automatically deleted. It takes note of the ministry's commitment to include this request in the draft decree. to the greatest vigilance so that the personal data, which would be recorded in duplicate, on separate supports, are indeed in their content in conformity with each other. Concerning the information of the persons concerned by the processing "ORPER" The terms information for applicants, declarants and birth

parents identified by the CNAOP are specified in draft article R. 147-33 of the CASF. In addition to the CNAOP website to which the draft decree refers as an information medium, the Ministry sent the Commission the welcome booklets drawn up for the purpose of providing information to applicants, declarants and women who gave birth under X concerning the processing of their data as well as the letters addressed to the birth parents. The Commission draws the attention of the Ministry to the need to update the information as it currently exists in the various communication media used so that strictly comply with the requirements of Articles 12, 13 and 14 of the GDPR. It notes that the Ministry is in the process of updating the materials, in order to fully comply with these provisions. the obligation to inform the persons concerned, in particular when it collects, under the first acts of investigation, personal data concerning persons likely to be the birth parents without this being subsequently confirmed (e.g.: list listing the identities of several potential birth parents who later turn out not to be involved in the secret birth at the origin of the referral to the CNAOP). For these situations, the Commission recommends that the draft decree specify the nature of the appropriate safeguards identified by the Ministry which will be put in place to protect the rights and freedoms as well as the legitimate interests of the persons concerned. Concerning the production of statistics and the anonymization of documents The Ministry informed the Commission that the personal data collected in the context of the "ORPER" processing could be used for the purpose of producing statistical results. The Ministry indicated, during its exchanges with the Commission, that these statistics were produced in anonymous form. In view of the exceptional nature that secret birth can take on, the Commission considers that the risks of re-identification of persons must be assessed with the greatest attention and, where necessary, diminished by reducing, for example, the granularity of the sets used. persons who could be targeted. In the absence of additional information concerning the type of documents subject to such anonymisation, the categories of recipients of the anonymised documents and the purposes of this anonymisation, the Commission considers that it does not have sufficient information to decide on the anonymization process used. In any event, the Commission points out that that the concealment of the identity of persons cannot guarantee the anonymous nature of a document if other information made it possible to reidentify the persons. The Commission invites the Ministry to ensure the conformity of the two procedures mentioned above, concerning the production of statistics and the anonymization of documents, with the criteria of individualization, correlation and inference defined by the "article 29" working group (G29), in its opinion 05/2014 of April 10, 2014 on the techniques anonymization. Concerning the security and confidentiality of data Personal data, sometimes sensitive, in connection with alleged racial origin or ethnic origin, religious beliefs or health, are collected and stored by the CNAOP. The

Commission recalls that these data must be subject to appropriate measures in order to protect their security and confidentiality in accordance with the requirements of Article 32 of the GDPR. It thus invites the Ministry to pay particular attention to the security of communications, backups and any use of this data. Concerning logging In its exchanges with the CNAOP, the Commission was informed that logging of actions relating to the systems information was planned. In this respect, the Commission recommends implementing a system for processing and analyzing the data collected and formalizing a process for generating alerts and processing them in the event of suspicion of abnormal behaviour. Finally, the Commission notes that the implementation of automatic deletion of traces after one year is planned by the Ministry and will be implemented from April 2022. Finally, in the event that the hosting of health data would be outsourced for information of this nature which would be left freely by the birthmother, the Commission calls for the use of an approved or certified service provider for this end. The President Marie-Laure DENIS