Deliberation 2020-001 of January 9, 2020Commission Nationale de l'Informatique et des LibertésNature of the deliberation: OpinionLegal status: In force Date of publication on Légifrance: Tuesday May 05, 2020NOR: CNIX2010906XDeliberation n° 2020-001 of January 9, 2020 providing an opinion on a draft decree creating an automated processing of personal data known as the "weapons information system" (request for opinion no. 19017309)The National Commission for Computing and Liberties,

Seizure by the Minister of the Interior of a request for an opinion concerning a draft decree creating an automated processing of personal data called the weapons information system;

Having regard to Convention No. 108 of the Council of Europe for the protection of individuals with regard to automatic processing of personal data;

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

Having regard to Directive (EU) 2016/680 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 by competent authorities for the purposes of prevention and detection of criminal offences, investigation and prosecution thereof or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA;

Having regard to Directive (EU) 2017/853 of the European Parliament and of the Council of 17 May 2017 amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons;

Having regard to the public health code, in particular its article L. 1110-4;

Having regard to the internal security code;

Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its articles 87 and following;

Having regard to Decree No. 2017-102 of January 27, 2017 creating a service with national jurisdiction called the Central Arms Service;

Having regard to Decree No. 2018-542 of June 29, 2018 relating to the regime for the manufacture, trade, acquisition and possession of weapons;

Having regard to decree n° 2019-536 of May 29, 2019 as amended, taken for the application of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms;

Considering the decree of November 15, 2007 creating the application for managing the computerized directory of owners and possessors of weapons;

Having regard to deliberation no. 2006-231 of October 17, 2006 providing an opinion on the draft decree in Council of State creating the application for managing the computerized directory of owners and possessors of weapons;

After having heard Mrs. Sophie LAMBREMON, commissioner, in her report and Mrs. Nacima BELKACEM, government commissioner, in her observations, Issues the following opinion: European directive 2017/853 of 17 May 2017 referred to above modifies the regulations relating to the control of the acquisition and possession of weapons with the aim of combating the misuse of firearms for criminal purposes. As such, it lays down measures aimed at regulating the legal regimes for the acquisition and possession of firearms, in particular by tightening the rules applicable to weapons considered to be the most dangerous, by securing the conditions for the sale of firearms fire as well as by imposing a reinforced traceability of these.

The Commission notes that it is in this context that it was asked for an opinion, on the basis of Article 89 of the law of 6 January 1978 as amended, of a draft decree establishing an automated processing of personal data referred to as the Weapons Information System, hereinafter referred to as SIA. This processing, implemented by the central arms service (SCA) and for which a privacy impact analysis (AIPD) has been transmitted, is intended to constitute the central tool for the control of legal arms in France in as part of a strategy to strengthen public security, fight against fraud and modernize State action.

It observes that the SIA is intended to replace, in the long term, the management application for the computerized register of owners and possessors of weapons (AGRIPPA) on which the Commission has already ruled in its deliberation of October 17, 2006 referred to above. In this respect, the Commission takes note of the clarifications provided by the Ministry according to which all the data recorded in AGRIPPA will be integrated into the SIA processing, allowing, on the basis of the surname, first name and date of birth of the person , to enrich and update the data concerning it in SIA . As such, it recalls that if the requirement of updating and accuracy of data constitutes an obligation which it is essential to ensure compliance with, it cannot justify the storage for an unlimited period of data from AGRIPPA. in AIS treatment.

Given the purposes pursued by the SIA processing, which concerns public security and is partly implemented for the purposes of preventing and establishing criminal offenses within the meaning of Directive 2016/680 of 27 April 2016 referred to above,

the Commission considers that it falls within the scope of both Regulation (EU) 2016/679 of 27 April 2016 (GDPR) and the aforementioned directive. On the purposes of the processing: The Commission notes that the different purposes mentioned in Article 1 of the draft decree must make it possible to ensure the management and monitoring of all the titles, authorizations and opinions issued in the field of weapons as well as to offer certain users the possibility of proceeding electronically with formalities relating to weapons with the administrative authority, by means of an individualized account. Although the Commission notes that only procedures relating to manufacturing, trade and intermediation are concerned by the dematerialization of formalities, it nevertheless notes that this possibility is intended to be, in the long term, open to all holders of weapons.

It observes that these purposes fall within the framework of the measures provided for by Directive 2017/853 of 17 May 2017 referred to above which establishes common rules for the marking and registration of firearms, so as to strengthen their traceability, better control their circulation and which imposes, in particular on each Member State of the European Union, the creation of a file containing all the information necessary to trace and identify firearms.

It also notes that the creation of a central tool for the control of legal weapons in France should make it possible to reduce the number of requests from the prefectures while making the data recorded there more reliable. The Commission thus takes note of the clarifications provided by the Ministry according to which the automation of the control processes must allow the regular and systematic updating of the recorded data and carry out a recurring check on the latter.

Under these conditions, the Commission considers that the purposes pursued by the processing are determined, explicit and legitimate, in accordance with Articles 5-1-b of the GDPR and 4-2° of the amended law of 6 January 1978. On data collection identification of persons, weapons and their elements: The draft decree introduces an article R. 312-85 to the internal security code (CSI), which provides that different categories of data may be the subject of a record in SIA processing. The Commission notes that these categories relate respectively to the identification data of purchasers and holders of weapons, of persons engaged in the manufacture, trade or intermediation of weapons, the identification data of weapons and those relating to the issue of the relevant titles.

While it considers that most of the data recorded within these categories does not call for any particular observation with regard to the purposes pursued by the processing, the Commission nevertheless intends to make the following observations on some of these data.

Firstly, it notes that the draft decree provides that the photograph of the person may be collected in the event of an application for a European firearms card. In this respect, the Commission takes note of the clarifications provided by the Ministry according to which no facial recognition device will be implemented on the basis of the photograph collected, which will be subject to deletion at the end of the validity of the card (i.e. five years).

It also takes note of the absence of interconnection or supply of another file within the framework of the delivery of this card.

Under these conditions, the Commission considers that the measures implemented by the Ministry are such as to guarantee the proportionality of the collection of this data.

Secondly, the draft decree provides that the medical certificates mentioned in Articles L. 312-4, L. 312-4-1, L. 312-6 and R. 312-66-5 of the CSI may be subject to of a record in processing. If the production and collection of such a document, in accordance with the aforementioned provisions, does not call for any particular observation, the Commission invites the Ministry to limit access to these certificates only to persons who strictly need to know regard to their missions.

Thirdly, the Commission notes that the mayor's opinion, requested in accordance with Article R. 313-10 of the CSI, may be recorded in the SIA processing. It observes that this opinion will only be collected in the event of a request for authorization to open a retail trade in weapons, ammunition and their components.

Under these conditions, it recalls the importance of ensuring strict confidentiality of the opinion thus collected with regard to the personal data that it is likely to contain and takes note of the details provided by the ministry according to which access or the communication of this document will be limited to the only agents of the SCA and the prefectures, which it considers likely to limit the potential risks of infringement of the rights and freedoms of the persons concerned.On the data and information resulting from the administrative investigation provided for in Article R. 114-5 of the Internal Security Code: As a preliminary point, the Commission recalls that the administrative investigations carried out on the basis of Article R. 114-5 of the CSI are carried out either by the authority prefecture, or by the national administrative security investigation service (SNEAS). It takes note of the details provided by the Ministry according to which it is planned, in the long term, to transfer the administrative investigations carried out by the prefectures to the SNEAS.

Firstly, article R. 312-85-V, introduced into the CSI by the draft decree, provides that the processing may include an indication of the data subject's registration in the national file of prohibited Acquisition and Possession of Arms (FINIADA). In this respect, it is specified that this automatic consultation is carried out for the sole purpose of verifying whether the identity of the person

concerned is registered there. The Commission notes that this consultation, which will result in a positive or negative hit, cannot automatically generate an administrative decision, additional checks being systematically carried out in order to assess the situation of the person concerned.

Secondly, this same article provides that the result of the interrogation of bulletin number 2 (B2) of the criminal record (nil or positive) may appear in the processing. The Commission notes that, when it includes one or more incapacitating convictions in terms of weapon policing, the B2 will be subject to manual recording in the processing. It also notes that, if the criminal record is automatically queried by the SIA processing, no data from the B2 is transcribed automatically in the processing. The criminal records service, following a hit, sends a copy of the B2 by post to the officer in charge of the investigation.

Although the Commission considers that the registration of the B2 appears justified when there is an incapacitating conviction in the area of weapons, it nevertheless questions the registration of the positive statement with regard to the B2, without distinction as to the conviction which would be entered therein, insofar as such a conviction would not likely be of such a nature as to obstruct the person's request for authorization in the matter of a weapon. It takes note that only the mentions nil or positive under one or more incapacitating convictions in matters of police weapons will be recorded in the processing and, at its request, the draft decree as well as the AIPD have been modified in order to expressly mention it.

Thirdly, the processing of data and information resulting from the administrative investigation may include the existence of a measure of hospitalization without consent, of a measure of legal protection pursuant to Article 425 of the Civil Code, and a ban on exercising a commercial activity.

In this respect, the Commission takes note that this information will not come directly from automated processing of personal data but from the questioning by the prefectural agent: of the regional health agency (ARS), of the registry of the judicial court and national criminal record. It also notes that this indication will be transcribed in the SIA processing in the form of a checkbox in the event of guardianship or curatorship and through the intermediary of the B2 in the case of the prohibition to exercise a commercial activity.

The Commission recalls that the mention of the existence of a measure of hospitalization without consent is of a sensitive nature. It constitutes health data within the meaning of the regulations applicable to the protection of personal data, which must be subject to increased vigilance. Any information covered by medical secrecy should also benefit, unless otherwise provided, from the protection provided for in Article L. 1110-4 of the Public Health Code.

In this respect, it takes note of the clarifications provided by the ministry according to which under this category, only a known or unknown mention, in the form of a checkbox, will be entered in the SIA processing by the prefecture agent. following the request of the ARS.

The Commission nevertheless wonders about the possibility for agents of the prefecture and the central arms service to access this data, in particular with regard to the provisions of Articles L. 312-6 and R. 312-8 of the CSI, which seem limit access to this information to the sole representative of the State in the department.

Finally, it recalls that it is up to the data controller, a fortiori in this case, given the significant stakes for the persons concerned, to ensure the accuracy of the data recorded in the SIA as well as their up to date.

Fourthly, the aforementioned Article R. 312-85-V provides that the opinion of the National Service for Administrative Security Investigations as well as the reports of the police or gendarmerie services should be included in the processing.

In this respect, the Commission notes that, in the opinion of the SNEAS, the automated processing of the centralized consultation of information and data (ACCReD) will not be the subject of a direct query by the processing SIA. It also notes that the elements motivating the opinion of the SNEAS are the subject of a collection within the processing in the sole hypothesis of a negative opinion.

With regard to the reports of the police or gendarmerie services, the Commission notes that a report or a detailed opinion may be sent by these services to the prefecture officer following the investigation which has been carried out. It considers that the collection of this information, limited to the sole opinion resulting from the administrative investigation carried out by the police or gendarmerie services, does not call for any particular observation.

In general, if the recording of data in the processing under the administrative inquiries carried out does not call for any particular observation with regard to the purposes pursued by the processing, the Commission is particularly reserved as regards the communication of this information to agents other than those in charge of processing applications, given the data that these documents are likely to contain, a fortiori for simple monitoring purposes. It therefore recalls the need to ensure that only the data strictly necessary for the objective assessment of the situation of the person concerned are transmitted and this, within the limit of the need to know of each agent. On interconnections, comparisons and links: Article R. 312-87 of the CSI, as introduced by the draft decree, provides that the SIA processing can carry out the automatic and, if necessary, simultaneous consultation of data processing at personal character.

As a preliminary point, with regard to the querying and linking with other processing of personal data, the Commission recalls - in general terms - that it is important to ensure that only processing involving personal data relevant, adequate and necessary with regard to the purpose and specific issues of the issuance of the title requested are consulted. In the same way, it considers that particular attention must be paid to processing that may be the subject of systematic and/or regular automated consultation.

These general elements recalled, the Commission notes that, in addition to the consultation of FINIADA and the national criminal record for the purposes mentioned above and whose automatic consultation is expressly provided for by the draft decree, other processing may be subject to a consultation, for the purpose of verifying the validity of titles or information transmitted by the persons concerned.

Firstly, article R. 312-87 of the CSI provides that the national card validity check file (DOCVERIF) is consulted for the sole purpose of checking the validity of identity cards. In this respect, the Commission notes that only valid, invalid or unknown may be entered in the processing and that the possible reason for invalidity of the title is not transmitted to the SIA.

Secondly, this same article specifies that for the purpose of checking the validity of the information transmitted by the persons, the SIA processing can carry out the consultation of the various processing systems of the French federations of shooting, clay pigeon shooting, archery ball, ski, and hunting. For the same purposes, the National Address Base (BAN) as well as the company API can be consulted. In this respect, the Commission notes that this questioning is intended to check the validity of the documents transmitted on the one hand, and possibly to enrich the information communicated on the other hand (for example the address of the head office).

Thirdly, the draft decree provides that the processing of personal data relating to the management of requests for authorization for the cross-border flow of arms, ammunition and their components may carry out the automatic consultation of the processing mentioned in article R. 312-84 of the CSI. In this regard, the Commission notes that this query will be carried out in order to determine the classification of the weapons subject to an application for authorization by means of the general reference system for weapons.

Without calling into question the need to consult or question all of the processing covered by the draft decree, the Commission recalls that, given the particularly sensitive nature of some of this processing and the significant issues for the data subjects resulting from this question, special guarantees must be implemented so that the automation of these consultations does not

lead to opinions or decisions resulting from the sole registration of a person in the processing of personal data. In this respect, it acknowledges that additional checks will be carried out in the event of a positive response (hit).

In any event, the Commission deeply regrets that the Ministry does not intend to modify the regulatory acts governing the files queried and which fall within its competence, in order to explicitly mention that they may be the subject of a query by the SIA processing. On the regular screening of people registered in the processing: The Commission notes that the Ministry intends to regularly query almost all of the processing operations with which the SIA processing is interconnected or that it is likely to query. In this regard, continuous monitoring should be carried out once a year for screening purposes. The Commission takes note of the clarifications provided that this control is carried out in installments throughout the year.

Without calling into question the justifications for screening the persons registered in the processing, nor its necessity, with regard to the applicable regulations and in particular the aforementioned Directive 2017/853, the Commission considers that the draft decree should be supplemented in order to to expressly mention the screening that will be carried out. On the data retention period: Article R. 312-88 of the CSI, as amended by the draft decree, provides for differentiated data retention periods for each category of information, attached to the nature of the data recorded in the processing.

Firstly, the aforementioned article of the CSI specifies that the data and information relating to the weapons and elements of weapons as well as most of the data of identification of the users (namely, the first name, the name of use, the date of birth, postal address and place of birth) are kept for thirty years from their destruction. Given the obligations set in particular by Directive 2017/853 referred to above, the Commission considers that the duration thus adopted does not call for comment.

Article R. 312-88 of the CSI also specifies that other identification data (i.e. sex, date of death, nationality, e-mail address, telephone), in addition to those mentioned above and considered as necessary for the existence of an account with a view to carrying out the administrative procedures relating to weapons are kept until the closure of the individualized account or, failing that, for a maximum period of one year from the date of death of the holder.

The Commission observes that in the absence of generalization of the individualized account making it possible to carry out, by electronic means, formalities relating to weapons with the administrative authority, these data are likely to be kept in many cases for a period maximum of one year from the date of death of the holder of this account, even though the dematerialization of formalities by means of an individualized account is only one of the purposes pursued by the planned processing. In view of these elements and in the absence of details justifying such storage, the Commission has reservations as to the possibility of

storing other personal data and information in accordance with the procedures provided for in Article R. 312-88 of the CSI. More generally, it wonders about the advisability of determining the retention period of this data by correlating it to the duration of the opening of the individualized account.

Secondly, paragraph 3 of article R. 312-88 of the CSI provides that the medical certificates, as well as the data and information resulting from the administrative inquiry provided for in article R. 114-5 of the CSI are kept for a maximum period of one year from the notification of decisions relating to the issuance of titles for the acquisition, possession, port, manufacture, trade and intermediation of arms, ammunition and their components .

The draft decree also provides that the data relating to the issue of titles (for example the number of the document presented, the proof of identity, the supporting documents provided, or the opinion of the mayor) are kept for a period maximum of one year from the date of expiry of the titles of acquisition, possession, port, manufacture, trade and intermediation of arms, ammunition and their components.

Subject to these reservations, the Commission considers that the durations thus adopted comply with the provisions of Articles 5-1-e of the GDPR and 4-5° of the amended law of 6 January 1978. On the recipients: The draft decree introduced in the CSI Article R. 312-86 which provides that the following may have access, for the sole purpose of consultation, to all or part of the data recorded in the processing: customs agents, agents of the General Control of the Armed Forces (CGA) and the Directorate General for Armaments of the Ministry of Defense (DGA), officers from the Directorate General for External Security (DGSE) and the Directorate for Intelligence and Defense Security (DRSD), as well as officers of the General Directorate of Internal Security (DGSI).

Without calling into question the need for all of these agents to be aware of information resulting from the SIA processing, the Commission wonders about the reasons which led the Ministry to allow these agents direct access to the data recorded in the processing and not to make them only recipients of the only data which are necessary for them, taking into account their missions, on the one hand, and the purposes pursued by the SIA processing, on the other hand.

More specifically, with regard to the DGSE agents, the Commission takes note of the information provided by the Ministry according to which these agents are intended to access SIA processing data in the context of the administrative investigations they carry out, even though it has clarified that the carrying out of administrative inquiries relating to the persons concerned by the SIA does not constitute a purpose in itself of the processing. In this context, it wonders about the possibility for the agents

of the DGSE to directly access the data recorded in it for the purpose of carrying out these investigations.

Furthermore, with regard to the direct access of DGSI agents to SIA processing data, while the Commission takes note of the information provided by the Ministry according to which it is of major interest in assessing the profile of an individual, the acquisition of a weapon which may reveal an attraction to violence or even indicate the implementation or acceleration of acts preparatory to a passage to the act, it also notes that the processing pursues an overall objective of traceability of weapons with fire whose prism is not, according to the ministry, that of the follow-up of the individual. In view of these details, the Commission wonders about the possibility for DGSI agents to directly access the information recorded in the processing for the purposes of monitoring people, on the one hand, and for intelligence, on the other. .On the rights of data subjects: Article R. 312-90 of the CSI, as introduced by the draft decree, provides that the right of opposition does not apply to this processing, which does not call for no observation. It also specifies that in accordance with articles 13 to 16 and 18 of the [RGPD] and articles 104 to 106 of the aforementioned law of January 6, 1978, the rights of information, access, rectification and limitation are exercised with the central arms service or the territorially competent prefect, according to their respective attributions.

The Commission notes that these rights may be subject to restrictions, in order to avoid hampering investigations, research or administrative or judicial proceedings, or to avoid prejudicing the prevention or detection of criminal offences, investigation or prosecution of the matter or the execution of criminal penalties or to protect public safety. Given the purpose of the processing, the limitation of these rights, which are exercised in this case with the Commission under the conditions provided for in Articles 108 and 118 of the same law, does not call for any particular observation.

Although the Commission considers that the procedures for exercising these rights do not call for any particular observation, it regrets that the information delivered to the persons concerned cannot be provided directly to them but intervenes through the general conditions of use when connecting to the portal as well as through the website of the Ministry of the Interior. On security measures: The Commission takes note of the details provided by the Ministry concerning the technical bricks used, as well as the organizational measures patch management to use the most up-to-date versions. However, it recalls that the systems chosen are in the middle of their life cycle and will have to be updated in the medium term.

The Commission notes that the authentication measures comply with deliberation no. 2017-012 of 19 January 2017 adopting a recommendation relating to passwords, in terms of length, complexity and frequency limitation for the users. It also takes note of the additional and systematic use of an agent card, making it possible to adapt the level of requirement to the sensitivity of

the data.

The stored data is encrypted with algorithms and key management procedures that comply with appendix B1 of the general security reference system. The Commission takes note of the fact that the exchanges relating to backups will take place entirely on private networks controlled by the data controller.

With regard to interfacing with third-party services, the Commission recalls the need to implement effective, high-level security conditions capable of guaranteeing the confidentiality of data when interfacing with external information systems. . These conditions must be based on means ensuring the authentication of third parties, the confidentiality and the integrity of the information exchanged.

The Commission notes that the prohibition to select a particular category of persons for processing based on these data alone, provided for in Article R. 312-85-V of the CSI, is technically transcribed by the absence of interrogation of the database allowing this use made available to agents.

With regard to traceability data, the draft decree provides that they are subject to storage for a period of six years. In this regard, the Commission points out that the sole purpose of collecting this data is the detection and/or prevention of illegitimate operations on the data. Therefore, they must in no case allow access to information whose retention period has expired. Consequently, the traceability data must not include, even partially, information on stored data. In any case, any illegitimate operations cannot be continued once the processing data has been deleted, the traceability data becoming useless once they have been deleted.

The Commission notes that the seriousness of the risks of illegitimate access and unwanted modification of data is considered by the Ministry to be significant. In this respect, it recalls, given this risk, that the log data must be stored on equipment on which administrators with functional access to the system do not have rights in order to fulfill their role in terms of detection or prevention of illegitimate transactions. The Commission also recommends that an integrity check be carried out on the stored data, for example by calculating a fingerprint of the data with a hash function in accordance with appendix B1 of the general security reference system.

The other security measures do not call for comments from the Commission. However, it recalls that the security requirements provided for in Articles 5-1-f and 32 of the GDPR and 99 of the amended law of January 6, 1978 require the updating of the AIPD and its security measures with regard to the reassessment regular risks.

The president,

M. L. Denis