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February 16, 2023 providing an opinion on a draft decision relating to the creation of a central file of permanent hunting permit

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concerned: draft decision relating to the creation of a central file of permanent permits for huntingThemes: French Office for

Biodiversity, hunting permits, agricultureBasis for the referral: Article 8.I.2°.e) of Law No. January 1978 amended relating to

data processing, files and freedoms The main point: The French Office for Biodiversity (OFB) creates a central file of

permanent hunting license titles in order to organize the examination of this license and the issuance of titles. The OFB plans

to exclude the right of opposition. The CNIL considers this exclusion possible under Article 23 of the GDPR, the OFB acting as

a public establishment in the context of the performance of its missions and under its regulatory power. The CNIL reminds that

the publicity and the precision of the act must be sufficient in order to guarantee the rights of the persons concerned.The CNIL

recommends carrying out an impact analysis relating to data protection.THE NATIONAL COMMISSION FOR COMPUTER

AND OF FREEDOMS, 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 RGPD); Having regard to Law No. 78-17 of January

6, 1978 as amended relating to data processing, files and freedoms (hereinafter Law " computing and freedoms"), in particular

its article 8.I.2°.e); On the proposal of Mr. Alain DRU, Commissioner, and after having heard the observations of Mr. Benjamin

TOUZANNE, Government Commissioner, ADOPTS THE FOLLOWING DELIBERATION :I. The referralA. The context The

right to hunt is conditional on the possession of three elements: the permanent title of the hunting license, obtained by passing

an examination and issued for life; the validation of the hunting license, which consists of an administrative request and a

subscription to be renewed each year with the competent departmental federation; andsubscription to hunting insurance.

Article L. 423-4 of the Environment Code creates a national file for hunting licenses made up of: the central file of permanent

hunting license titles managed by the French Office for biodiversity (OFB); andthe central file of validations and authorizations

to hunt managed by the National Federation of Hunters.B. The subject of the referralThe CNIL was referred for opinion on July

1, 2022 by the OFB of a draft decision relating to the creation of the central file of permanent hunting permit titles. This file

aims to organize registration for the examination of the license to hunt and the issuance of permanent titles. Its purpose is to

analyze the admissibility of registration files for the examination of the hunting license and requests for duplicates of lost, destroyed or damaged titles. The OFB is responsible for this processing, which it puts implemented on the basis of the performance of a task in the public interest.

**II. The opinion of the CNIL.** On the data collected Article 2 of the draft decision provides for the collection of a medical certificate of fitness, attesting to the absence of medical conditions and infirmities making the practice of hunting dangerous, as provided for by the texts[1]. Its presentation is mandatory for registration for the hunting license examination[2]. This certificate constitutes data relating to health, the processing of which must be permitted by one of the exceptions of article 9 of the GDPR. The CNIL takes note of the mobilization by the OFB of article 9.2.g of the GDPR, justifying the processing of this sensitive data under the important reason of public security. In addition, Article 2 of the draft decision provides for the words "withdrawal or suspension of the hunting license (yes/no)" and "registration with FINIADA ( yes/no)", which constitute grounds for prohibiting the issue of a hunting permit in accordance with Article L. 423-11 of the Environment Code. These decisions – coming from a judicial authority – constitute data relating to criminal convictions and offenses or security measures within the meaning of Article 10 of the GDPR, the processing of which must be permitted by one of the exceptions of the GDPR. article 46 of the law "computing and freedoms". within the framework of its legal powers. In addition, it welcomes the minimization of the data collected to those strictly necessary to ensure the compatibility of the legal situation of persons with the carrying of a weapon.

**B. On retention periods** The presentation file indicates that all data collected will be kept for 99 years. The OFB specifies that this period is necessary in the event of a request for the issue of a duplicate, as well as a request for justice or a hunting accident in order to verify that the license has been issued in a regular manner. This particularly long period nevertheless appears justified, in principle, by the issuance of the hunting license for life. However, the CNIL questions the relevance of keeping the medical certificate – so-called sensitive data within the meaning of Article 9 of the GDPR – for 99 years. Indeed, by this document, the doctor attests to the compatibility, at the time of his registration, of the physical and psychological state of health of the candidate with the possession of a weapon. The registration file being validated a first time by the departmental hunting federation, then checked by the OFB, the conservation of this document does not appear justified beyond the duration necessary for the registration procedure.

specific protection required for the processing of sensitive data, the Commission recommends reducing the retention period of the medical certificate and limiting it to the limitation period applicable to contesting the results of the examination. It welcomes the commitment of the OFB to reduce this period to 1 year. The CNIL also takes note of the planned changes to the tool in order to automatically delete the

data at the end of the set period. C. On the right of opposition The OFB clarified that the right of opposition is excluded for this processing on the basis of article 23.1.h of the GDPR, in order to guarantee "the prevention and detection of criminal offenses, as well as the investigation and prosecution thereof or the execution of criminal penalties, including the protection against threats to public security and the prevention of such threats". Article 23 of the GDPR allows the right to object to processing, under certain conditions, by a "legislative measure". Recital 41 of the GDPR specifies that this "legislative measure" is not necessarily an act adopted by Parliament, but must be determined by the national law of each Member State. In France, it may in particular be a regulatory act. The CNIL considers that, with regard to processing involved in the performance of a task in the public interest, both the State and local authorities or public establishments may, in their respective areas of competence and if they have a regulatory power, limit or exclude the right of opposition. However, the exercise of this faculty is subject to a double limit: on the one hand, with regard to competence, not to encroach on the domain reserved for the law pursuant to Article 34 of the Constitution; on the other hand, to ensure that the conditions provided for in Article 23 are complied with. In its guidelines on Article 23[3], the European Data Protection Board (EDPB) in particular recalled the obligation for the data controller to ensure that the limitation envisaged is strictly necessary and proportionate in the light of the objective pursued. He also underlined that the act dismissing the opposition must be the subject of sufficient publicity and be accessible. In this case, the CNIL considers that the OFB, as a public institution, can exclude right of opposition, provided that, on the one hand, this exclusion is necessary and proportionate to the objectives of public interest pursued and that, on the other hand, the OFB has undertaken to ensure that the draft decision, which has a regulatory nature, includes the guarantees required by 2 of article 23. The CNIL also draws the attention of the OFB to the publication of the adopted regulatory act, which must be sufficient to guarantee the accessibility of this one.

D. On carrying out a Data Protection Impact Assessment (DPIA) The processing project foresees the collection of personal data on a large scale, sensitive or highly personal data (health data and data relating to convictions) and data of so-called vulnerable people (minors and elderly people). With regard to these elements and the nine criteria established by the European Data Protection Board to determine whether the processing of personal data is create a high risk for the rights and freedoms of the persons concerned, the Commission recommends carrying out a DPIA. The CNIL takes note of the OFB's commitment to carry out a DPIA. The other provisions of the draft decision do not do not call for observations from the CNIL.

The President Marie-Laure DENIS \_\_\_\_\_ [1] Article R. 423-25 of the Environment Code [2] Article L. 423-6 of the Environment Code [3] Guidelines 10/2020 of October 13, 2021 on the

limitations provided for in Article 23 of the GDPR