

Deliberation 2020-125 of December 10, 2020 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Wednesday June 29, 2022 NOR: CNIX2206246X Deliberation n° 2020-125 of December 10, 2020 providing an opinion on a draft order creating by the General Directorate of Customs and Indirect Taxes an automated treatment to fight against fraud called "data valorization for risk analysis" (request for opinion no. 2218894) The National Commission data processing and liberties, Seizure by the Ministry of the Economy, Finance and Relaunch of a request for an opinion concerning a draft decree establishing by the General Directorate of Customs and Indirect Duties of an automated treatment to fight against fraud called "data valorization for risk analysis"; Having regard to Convention No. 108 of the Council of Europe for the protection of individuals with regard to the automated processing of personal data; 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 on the competent authorities at for the purposes of the prevention, investigation, detection or prosecution of criminal offenses 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 the Customs Code; Having regard to the General Tax Code; Having regard to Law No. 78-17 of 6 January 1978 as amended relating to data processing, files and freedoms, in particular its article 31-I-2°; Having regard to Law No. 2019-1479 of December 28, 2019 on finance for 2020, in particular its Article 154; Having regard to Decree No. 2019-536 of May 29, 2019 as amended taken for the application of the law

n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; After having heard Mr. Philippe-Pierre CABOURDIN, commissioner in his report, and Mr. Benjamin TOUZANNE, commissioner of the Government, in his observations, Issues the following opinion: The proposed "data valuation for risk analysis" processing, implemented by the risk analysis and targeting service (SARC) of the General Directorate of Customs and Indirect Taxes (DGDDI) aims to model and visualize fraudulent behavior in order to carry out actions for the prevention, investigation, observation or prosecution of breaches of customs and tax legislation. The Commission notes, firstly, that the draft order submitted for opinion repeals the decree of June 27, 2017 creating by the DGDDI an automated processing to fight against fraud called "valorization of data for risk analysis" which authorized on an experimental basis for a period of one year the highlighting processing for the purpose of modeling and visualizing fraudulent behavior in order to carry out prevention, research, observation or prosecution of breaches of customs legislation. It is, as a contextual element, that if this draft decree aims to authorize a new processing of personal

data in order to take into account the methods of application of the collection mechanism of article 154 of the finance law for 2020 referred to above, this generally incorporates the main characteristics of the experimental treatment governed by the aforementioned decree of 27 June 2017. Article 154 of the aforementioned finance law for 2020 authorizes, on an experimental basis for a period of three years, the tax and customs administrations to collect and exploit freely accessible content clearly made public by users on social networks and online platforms (hereinafter "platform my and social networks").

This collection should make it possible to search for clues relating to the commission of certain offenses listed exhaustively by law, in particular for the DGDDI the offenses referred to in Articles 414, 414-2 and 415 of the Customs Code and the offenses referred to in Article 1791 ter and 3°, 8° and 10° of article 1810 of the general tax code. It observes that the methods of application of the aforementioned collection system will be governed by a decree in Council of State which is concomitantly the subject of an opinion of the Commission. Specifically, this draft decree takes into account the transmission and the analysis of certain data collected on the platforms and social networks in the planned processing in order to determine whether these constitute clues making it possible to characterize one of the offenses sought within the framework of the provision of the aforementioned Article 154. The Commission also notes that the draft order was submitted to it on the basis of the provisions of Article 31-I-2° of the law of 6 January 1978 as amended. Insofar as the planned processing aims to model and visualize fraudulent behavior in order to carry out actions for the prevention, investigation, observation or prosecution of breaches of customs and tax legislation, the Commission considers that this processing falls principle of the scope of Directive 2016/680 of 27 April 2016 referred to above. These general elements recalled, the Commission intends to make the following observations.

On the purposes of the processing Firstly, paragraph 1 of Article 2 of draft decree specifies that the processing aims "to model and visualize fraudulent behavior in order to carry out actions to prevent, research, establish or prosecute breaches of customs and tax legislation". particularly broadly retained with regard to the purposes pursued by the processing "" data valuation for risk analysis ". It considers in this respect that that paragraph 1 of article 2 deserves to mention the categories of offenses against the tax and customs legislation actually targeted. The Commission takes note of the ministry's commitment to modify the draft decree in this sense. for the purposes of analysis and finally to model and explore them (in particular by implementing datamining techniques and statistical and probability methods). It notes that the results thus obtained via the various aforementioned techniques will be transmitted to the competent customs services in terms of targeting and control for an in-depth human analysis. The Commission therefore observes that the planned processing is only a tool to help and guide the

work of agents and not a profiling tool intended to directly identify potential fraudsters and notes that the data modeled by the planned processing will in no case lead to an automatic programming of controls, nor a fortiori, to decisions directly enforceable against the persons concerned. Secondly, paragraph 2 of the draft decree provides for the analysis by comparison of the data collected on the platforms and social networks with those recorded in the processing in the newly created "data valorization for risk analysis" processing. on the data from the collection system of article 154 of the finance law for 2020 before the transfer of these to the processing "val organization of data for risk analysis". Specifically, the data transferred and recorded will be those relating strictly to the indicators and criteria of relevance, purged of sensitive data and data which are not likely to contribute to the finding of the offenses and breaches referred to in the context of article 154. of the aforementioned finance law, and that these will subsequently be selected on the basis of scoresOn the data processedThe Commission notes that the data to be recorded come from various processing operations regularly implemented by the DGDDI, which are listed at Article 5 of the draft decree. It notes, however, that it emerges from the documentation sent by the Ministry that the "ROSA" processing (operators' repository and monitoring of approvals) will feed into the planned processing. On this point, the Commission takes note of the Ministry's commitment to amend the draft decree to include the aforementioned "ROSA" processing. In addition, if the Commission considers that the subsequent processing of data from other processing proves not to be incompatible with the purposes pursued by the planned processing, it nevertheless recalls that it will be up to the Ministry to proceed, if necessary, to updating the regulatory acts relating to this processing and to ensure that accuracy of the data recorded in the planned processing. In addition, point 9 of article 3 of the draft decree mentions, under the categories of data processed, "data resulting from the processing of collection and selection of relevant data" within the framework of the experiment provided for by article 154 of the law of December 28, 2019 of finances for 2020. The ministry indicated that the data resulting from the device of collection of the aforementioned article 154 which will be transmitted its planned processing is all the data collected on the platforms, i.e. the so-called "raw" data (for example, texts and images, URLs, user account nickname, date of collection), purged of sensitive data and data that are not likely to contribute to the finding of the offenses and breaches referred to in the context of article 154 of the aforementioned finance law. The Commission takes note of the modification of article 3 of the draft order in order to explicitly show the categories of data that it is planned to collect. On retention periods With regard to the retention periods of the categories of data mentioned in 1° to 8° of Article 3 of the draft decree, the Commission observes that these durations correspond to those provided for by the regulatory

acts relating to source processing. s data from the collection mechanism of Article 154 of the aforementioned finance law, the Commission notes that these durations correspond to those set by the legislator in the aforementioned Article 154. On buyers and recipients The Commission notes that the two first paragraphs of article 6 of the draft order refer only to "processed information" without specifying whether it will be information relating to data collected within the framework of the sole processing "valorization of data for the analysis of risk" or information resulting from operations carried out within the framework of article 154 of the finance law for 2020. It requests that the draft decree be clarified on this point to specify what the personnel referred to in article Article 6 of the draft decree. On the rights of data subjects With regard to the rights of access, rectification, erasure and limitation, Article 7 of the draft decree indicates that these rights apply Work with the office in charge of control policy within the DGDDI. The Ministry also specifies that insofar as the planned processing will contain data from other processing, the rights of access or rectification will be exercised as a priority within the framework of the "source" processing and that any rectifications resulting from the exercise of these rights will automatically be reflected in the planned processing via a data updating mechanism, which it takes note of. On security measures The Commission observes that measures have been put in place to guarantee strict access to data and that only duly authorized persons and within the limits of the need to know will be able to access it as indicated in article 6 of the draft decree. Article 8 of the draft decree specifies that data collection operations , modification, consultation, communication, transfer, interconnection and deletion of data and processing information are subject to registration including the identity ication of the author, date and time of the operation. The logs of the consultation and communication operations also show the reason for the operation. The President M.-L. DENIS