

Deliberation 2022-025 of February 17, 2022 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

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2022-025 of February 17, 2022 providing an opinion on a draft order creating by the Directorate General of Public Finances the processing of personal data called GALAXIE (request for opinion no. 2223022)

The National Commission for Computing and Liberties, Seizure by the Minister for the Economy, Finance and Relaunch of a request for an opinion concerning a draft decree creating by the General Directorate of Public Finances the processing of personal data called GALAXIE; 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 this data, and repealing Directive 95/46/EC (RGPD); Having regard to Law No. 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms, in particular its Articles 31-I, 33 and 89-I; Having regard to the general tax code, in particular its articles 1741 and 1743; Having regard to the book of tax procedures, in particular its articles L. 10, L. 81, L. 229 to L. 231; Having regard to the penal code, in particular its articles 313-1 and following; On the proposal of Mr. Philippe-Pierre CABOURDIN, commissary, and after having heard the observations of Mr. Benjamin TOUZANNE, Government Commissioner, Issues the following opinion: 'a request for an opinion relating to a draft decree creating by the General Directorate of Public Finance (DGFIP) the processing of personal data called GALAXIE. The GALAXIE processing is part of the PILAT project (Management and Analysis of control) overhaul of the tax control information system. This project includes the implementation of new applications and the rewriting of existing tools, such as GALAXIE which replaces the Transparency of screen structures - TSE processing, on which the CNIL was asked to rule in its deliberation n° 03-048 of October 30, 2009. On the purposes and the legal regime applicable to the processing In the first place, with regard to the purposes of the planned processing, article 2 of the draft decree provides that it is consulted by the authorized agents, for the purposes of improving compliance with users' tax obligations, to carry out research, investigation, programming, control and recovery of tax breaches. It emerges from the wording of this article that the purpose pursued by the processing is to carry out research, investigation, programming, control and recovery operations. However, the impact analysis relating to the protection of data (AIPD) transmitted indicates that the processing improves the means of control within the framework, on the one hand, of the regularization of the error made by the taxpayer in good faith, and on the other hand, of the fight against the evasion and tax evasion (by facilitating the detection of tax evasion schemes within the framework of tax missions falling under both the DGFIP

and the General Directorate of Customs and Indirect Taxes (DGDDI) and assistance in determining joint responsibilities in the organization of the fraud). In the light of these elements, the Commission considers that Article 2 of the draft decree should be supplemented in order to show the purpose relating to the regularization of the error committed by the Bonn taxpayer. of faith and to specify the purpose relating to the fight against tax evasion, mentioned in the DPIA. Secondly, with regard to the legal regime applicable to the processing, the Commission notes that the Ministry considers that the planned processing falls entirely within of the GDPR. In this regard, the Ministry indicated that the main purpose of GALAXIE processing is to improve compliance with tax breaches likely to constitute criminal offences. The Ministry also specified that the processing is primarily intended to ensure compliance with taxpayers' tax obligations and to take administrative sanctions, if necessary. However, it appears from the draft decree that the processing has two purposes. , both relating to the improvement of the means of control. The first purpose, marginal, is the improvement of the means of control within the framework of the regularization of the error committed by the taxpayer in good faith. It unquestionably falls under the GDPR. However, the Commission points out that the second, main purpose relates to improving the means of control in the context of the fight against tax evasion and fraud. The ministry indicated that collection operations can result in tax penalties and criminal prosecution. The Commission also recalls that it considered in its deliberation no. targeting fraud and valuation of requests (CFVR) - which exclusively feeds the GALAXIE processing and of which the latter only displays the links of a given taxpayer in order to facilitate its understanding by a research or control - aims to model and visualize fraudulent behavior in order to carry out actions to prevent, research, record or prosecute criminal offenses as well as operations to research, record or prosecute tax breaches. In this respect, the Commission had considered in its deliberation No. 2020-123 of December 10, 2020 relating to CFVR processing that the purpose of this processing falls in principle under the police-justice directive. With regard to all of these elements, the Commission draws the government's attention to the fact that it is likely that the GALAXIE processing falls under a mixed system. The processing would fall under, on the one hand, the GDPR for the purpose relating to the improvement of the means of control within the framework of the regularization of the error made by the taxpayer in good faith, and, on the other hand, of the title III of the law of January 6, 1978 for the purpose relating to the improvement of the means of control and the repression in matters of tax fraud. Indeed, on the one hand, the departments authorized to implement the processing - the departments of the DGFIP charged with a task of controlling the taxes, duties and taxes provided for by the General Tax and Services Code and the departments of the DGDDI responsible for control and investigations as well as collection - seem to be

competent authorities within the meaning of Article 87 of the Data Protection Act. On the other hand, the possibility of prosecuting breaches through tax penalties or by seizing the public prosecutor's office seems to bring treatment at least partly within the scope of the police-justice directive, with regard to the notion of criminal offense within the meaning of European law. It calls on the Government to clarify the question of the legal regime and therefore considers that, if the processing falls under a mixed regime (GDPR and police-justice directive), the draft decree should make this appear and the processing plan should be brought into compliance with the regulations relating to each of these plans. In this respect, for the part of the processing that would fall under the police-justice directive, the Commission notes in particular that the ministry did send a DPIA with the request for an opinion in accordance with Article 90 of the law of January 6, 1978 amended. On the categories of data processed Article 3 of the draft decree lists the categories of data collected in the planned processing. Article 6 of the draft decree provides that the data processed come from the processing CFVR. The Commission notes that it has already ruled on this processing on several occasions. It takes note of the details provided by the Ministry according to which the decree creating the CFVR processing will soon be amended in order to provide for the connection with the GALAXIE processing. The Commission notes that some of the data processed in GALAXIE does not appear in the article 3 of the decree of February 21, 2014 establishing CFVR processing, and in particular context data. Consequently, and insofar as the CFVR processing constitutes the only source of data for the GALAXIE processing, the data not provided for in the CFVR processing cannot be present in GALAXIE in the absence of modification of the decree creating this first processing which will have to be submitted for the opinion of the CNIL. examination of a file, the data that can be consulted in GALAXIE are mostly public or already accessible by all DGFIP agents in its applications. It notes in particular that the links of partners and managers, mentioned in article 2 of the draft decree, are data already published on public or private bases (such as Infogreffe or société.com for example). With regard to professional data, they correspond to information relating to previous checks for which any head of department already has national authorization. On the recipients Article 4 of the draft decree mentions the recipients of the data processed in GALAXIE. The Commission considers that Article 4 of the draft decree could specify the services among the directorates of the DGFIP and the DGDDI authorized to receive communication of the data processed and not only mention the directorates as a whole. that, in accordance with 6° of article 33 of the law of January 6, 1978, requests for advice addressed to the CNIL on the basis of article 31 must specify the categories of persons who, by reason of their functions or for the needs of the service, have direct access to the recorded data. However, it notes that the AIPD transmitted does not make it possible

to clearly distinguish the accessors to the GALAXIE processing data from the recipients. The Commission therefore considers that the AIPD should be clarified on this point in accordance with Article 33 of the Law of 6 January 1978. On the retention periods for data Article 5 of the draft decree provides that the data that can be consulted, which come from CFVR, have a historical depth of ten years from the date of collection of the information by the DGFIP. This duration corresponds to the maximum duration of the right of recovery of the tax administration, which can be exercised, in the case of hidden activities, until the end of the tenth year following that in respect of which the taxation is due or under which the tax has become payable. Firstly, the Commission notes that it had already ruled on the retention periods for the data processed in the CFVR processing. In this respect, it considers that the maximum duration should be adapted according to the types of error or fraud in question in order to comply with the provisions of article 6-5° of the law of January 6, 1978 as amended. Furthermore, the Commission considers that Article 5 of the draft decree should specify that the period of ten years is from the date of collection in the CFVR processing, and that this is a maximum period depending on the taxes concerned, as indicated in the order of 21 February 2014 relating to CFVR processing. Secondly, the Commission notes that the Ministry indicated that GALAXIE is supplied monthly by CFVR with a file containing information with a historical depth of ten year. This file cancels and replaces the data transmitted the previous month. For the purposes of clarity, the Commission invites the Ministry to mention this monthly update frequency in the draft decree. On the exercise of the rights of the persons concerned Firstly, the Commission notes that the Ministry bases the processing on the performance of a task in the public interest in accordance with Article 6-e of the GDPR. With regard to this legal basis, it recalls that the right to erasure is not applicable, in accordance with Article 17-3-b of the GDPR. The Commission considers that Article 7 of the draft decree should be amended to provide this clarification. article 7 of the draft decree should be supplemented with the provisions relating to the rights of the persons concerned in accordance with articles 104 and following of title III of the law of January 6, 1978. On security measures The Commission notes that calls to the API (Application Programming Interface) are done through applications without exposure to the internet. It also recommends completely isolating the terminals present from the Internet or, failing that, taking all the necessary measures to avoid any attack of the cross-site request forgery type. The Commission notes positively the logging using individual agent identifiers to help secure log data. However, in order to guarantee the integrity of the logging data, it strongly recommends setting up an authentication system to ensure the veracity of the agent identifier transmitted when sending each HTTP request to the API .Article 5 of the draft decree provides for a retention period of four years. As this logging pursues internal control

purposes, the Commission considers that it is possible to have a data retention period of more than one year, which must be determined in a manner proportionate to the purpose pursued, in particular according to the temporalities described in the management processes. Insofar as the Ministry indicates that the level of risk implies a control of all the agents of all the user structures over a period of three years, it considers that a retention period of three years is proportionate and therefore invites the Ministry to reduce the currently planned retention period. The Commission also calls on the Ministry to inform authorized users of the implementation of the logging system, the nature of the data collected and the retention period for the latter. The President,

M.-L. Denis