

Deliberation 2018-356 of December 13, 2018 National Commission for Computing and Liberties Nature of the deliberation:

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December 13, 2018 providing an opinion on a draft Conseil d'Etat decree relating to the application of article L. 112 A of the book of tax procedures (request for opinion no. 18023160)

The National Commission for Computing and Liberties, Seizure by the Minister for Action and Public Accounts of a request for an opinion concerning a draft decree in Council of State relating to the application of Article L 112 A of the Book of Tax Procedures; 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 Parliament European Parliament and of the Council of April 27, 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 the procedures book tax, in particular its article L. 112 A; Having regard to law n° 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms, in particular its article 11-I-4-a; ° 2016-1321 of October 7, 2016 for a digital Republic; Considering the decree n ° 2005-1309 of October 20, 20 05 amended taken for the application of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; After having heard Mr. Philippe LEMOINE, commissioner, in his report, and Mrs. Nacima BELKACEM, Government Commissioner, in his observations, Issues the following opinion: Article L. 112 A of the Book of Tax Procedures (LPF). This article, created by law no. provides that "the tax administration shall make freely accessible to the public, in electronic form, the elements of information which it holds concerning the property values declared on the occasion of the changes which have taken place during the last five years" this "in order to contribute to the transparency of the land and real estate markets ". This draft decree has for the purpose of specifying the conditions of this free provision as well as the information made accessible, including personal data. The Commission therefore notes that this provision constitutes processing of personal data within the meaning of Article 4-2 of Regulation (EU) 2016/679 of 27 April 2016 referred to above (GDPR). recalls that prior to the application of the ESSOC law, there were already several public measures, in particular referred to in articles L. 135 B and L. 107 B of the LPF, providing for accessibility, for certain people who had previously authenticated (in particular local authorities, State services, researchers, real estate professionals, urban planning agencies, individuals, etc.), data relating to land values declared on the occasion of transfers. The Commission stresses that the draft decree is part of the context of strengthening the online opening of data held by the administrations ("open data"). In general, it recalls that the dissemination on the Internet of

public administration data in an open standard, easily reusable and exploitable by an automated processing system, is likely to contribute to administrative transparency while making it possible to stimulate economic innovation. through the creation of new services by offering great freedom as to the possibilities of re-using this data. In this context, it recalls that the massive publication of data online naturally has the effect of increasing the potential risks for the persons concerned, which can be amplified when the data is indexed by external search engines. Indeed, it cannot be excluded that the publication of public information may, without even initially containing directly identifying data, allow, by cross-checking with other public information made available and more generally with other data available on the Internet , the identification or re-identification of natural persons. With regard to these elements, the Commission intends to pay particular attention to the conditions under which data relating to property values will be disseminated. It also recalls that if the Ministry considers that the planned processing is likely to create a high risk for the rights and freedoms of natural persons, it is responsible for carrying out an impact analysis relating to data protection. (AIPD) before the implementation of this processing, in accordance with the provisions of Article 35 of the GDPR. On the purpose and legal basis of the processing With regard to the purpose pursued by the processing, the draft Article R. 112 A-1 of the LPF provides that "pursuant to Article L. 112 A of the Book of Tax Procedures, the tax administration makes available to the public information relating to sales, auctions, expropriations and exchanges real estate properties published in the real estate file over the past five years". The Commission notes that the provision of this information, provided for by the legislator, is justified by a reason of general interest due to the knowledge of real estate prices by anyone interested in this market and in particular local authorities, real estate professionals, urban planning, State services or even researchers. It notes that this provision must make it possible to improve the transparency of the real estate and land markets. The Commission also notes that this provision is accompanied by guarantees to reduce the risk of invasion of privacy. In particular, the Commission takes note of the absence of dissemination of directly identifying data, of the dissemination of data on the "www.data.gouv.fr" website, of the ban on indexing the data disseminated by external research services, and finally, the general conditions of use that will accompany the provision of the data, which provide information on the conditions for their reuse and the rights of individuals. It also notes that the provision will be strictly limited to so-called transfers "for consideration" (sales, auctions, expropriations and exchanges of immovable property) and not to all the changes likely to occur, which the Commission takes note of. On the other hand, the Commission considers that the draft decree is not sufficiently explicit as to the origin of the data subject to publication. It notes that the project submitted to it refers to data relating to transfers for

consideration "published in the real estate file" while it follows from the clarifications provided by the Ministry that this data would come from the file "Request for land values" (also referred to as "PATRIM Colloc") implemented by the Directorate General of Public Finances (DGFIP). In this regard, the Commission notes that the draft decree will be amended to specify that the data come from the "Request for land values" file. The Commission considers that the purpose pursued by the planned processing is determined, explicit and legitimate, in accordance with the provisions of Article 5-1-b of the GDPR. With regard to the legal basis relating to the planned processing, the Commission notes that the Ministry intends to avail itself of the legal obligation referred to in Article 6-1 -c of the GDPR, on the one hand, and the performance of a task in the public interest or in the exercise of official authority vested in the data controller of Article 6-1-f of the GDPR, on the other hand. While it notes that each of the aforementioned legal bases could be effectively invoked to provide a legal basis for the processing, the Commission considers, in general and taking into account the effects attached to each of these two bases, in particular on the rights people conceive data, that it is up to the data controller to determine which one he intends to rely on in this case. The Commission considers that it results in particular from the examination of the provisions of Article L. 112-A of the LPF that the legal obligation appears to be more appropriate to legally base the processing. On the data processed and the frequency of updating draft article R. 112 A-1-I of the LPF provides for the public availability of information relating to sales, auctions, expropriations and exchanges of real estate published in the real estate file over the past five years, in accordance with the provisions of L. 112 A of the LPF. Article R. 112 A-1 II of the LPF lists, for each transfer, the elements made available, namely: the date and nature of the transfer, the price, the address (street number, repetition index, type, street code and wording, postal code and wording of the town), cadastral references (town and department code, prefix and code of the cadastral section, number plan of the location of the goods, the number of volume as well as, if the property subject to the transfer is part of a co-ownership, the number of lots and the lot number within the limit of five lots per transfer) and the description of the property once it has been declared to the administration (Carrez law area, useful area, type of premises code, type of premises, number of main rooms, area of the land, and, for undeveloped land, nature of cultivation and special cultivation). In this respect, it notes that no data relating to the identity of the owner will be disseminated. The Commission considers that all the data previously listed, which relate to the transfer itself, the location and the characteristics of the property, are adequate, relevant and limited to what is necessary with regard to the purpose for which they are processed, in accordance with the provisions of Article 5-1-c of the GDPR. In addition, Article R. 112- A-2 II of the draft decree provides for a

half-yearly update of the information. Although the Commission takes note of the technical difficulties which prevent an automated purge of the data on their legal expiry date for dissemination, it nevertheless observes that certain data will therefore be disseminated, even though their dissemination exceeds the duration of five years set by the legislator. On the rights of the persons concerned The Commission notes that the information of the persons cannot, in this case, be delivered in an individualized manner because of the difficulty for the tax administration departments responsible for the posting of this data to directly contact the persons concerned, parties to the deeds of transfer. In this context, it acknowledges that the information will be made publicly accessible in accordance with the provisions of Article 14-5-b of the GDPR. In particular, the Commission notes that information to individuals relating to the public availability of data relating to property values will be provided on the website "www.data.gouv.fr" as well as on the website "www. impots.gouv.fr ". Given the purpose of the processing, it emphasizes the importance that such information is actually delivered in a concise, transparent, understandable and easily accessible manner in accordance with Article 12 of the GDPR. The Commission further recalls that data subjects may exercise their rights of access, rectification and limitation respectively provided for in Articles 15, 16 and 18 of the GDPR directly with the DGFIP with regard to the "Request for land values" file, from from which the data made available to the public originate. On the methods of dissemination and reuse of data The Commission notes that the I of the draft article R. 112 A-2 governs the methods of dissemination in p stating that "the information is made available to the public in the form of a file in a standard format, which can be downloaded", which does not call for any particular comment. The Commission also recalls that , in a context of opening up of public data, the indexing of data must exclusively aim to facilitate the research work of Internet users from the distribution portals. Thus, the indexing of data on external search engines should be prohibited in order to prevent an Internet search from the address of a property from obtaining information relating to the property values of this property. A In this regard, if it acknowledges that the distribution of the land value file on the "www.data.gouv.fr" site will not allow, as it stands, the indexing of personal data on external search engines , it nevertheless emphasizes that this website constitutes a distribution vector whose default settings could change. The Commission notes that the draft decree will therefore be amended to expressly prohibit the indexing of data on external search engines. The Commission also notes that Article R. 112 A-3 of the draft LPF provides that the processing relating to the reuse of published information "should have neither the purpose nor the effect of allowing the re-identification of the persons concerned". It notes that these provisions thus include in the draft decree its own recommendations in terms of reuse. Commission also observes that the purpose of the draft decree is to provide a

framework for the conditions for making information relating to property values available, it nevertheless recalls that the reuse of this information should be the subject of particular attention at the stage of their dissemination. In this respect, the Commission notes that the dissemination of the datasets will be accompanied by general conditions of use. in order to inform re-users of their obligations regarding the rights of individuals and the duration of data retention. It notes that these general conditions of use also provide for prohibiting the indexing of data by external search engines when these are disseminated online by reusers. The President I. FALQUE-PIERROTIN