

Deliberation 2022-120 of December 15, 2022 National Commission for Computing and Liberties Nature of the deliberation:

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December 15, 2022 providing an opinion on a draft decree relating to the reporting obligations of operators of electronic networking platforms (request for opinion no. 22014223)

The National Commission for Computing and Liberties, Request by the Ministry of the Economy, Finance and Industrial and Digital Sovereignty of a request for an opinion concerning the draft decree relating to the reporting obligations of platform

operators electronic linking; 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 these

data (RGPD); Having regard to law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its article 8-I-4°-a); Having regard to the general tax code, in particular its articles 1649 ter A to 1649 ter E and

appendix III to this code; On the proposal of Mr. Philippe-Pierre CABOURDIN, commissioner, and after having heard the observations of Mr. Benjamin TOUZANNE, government commissioner, Issues the following opinion: The draft decree

submitted for the opinion of the Commission defines the methods of application of the declarative obligations of electronic networking platforms (hereinafter the platforms). These declarative obligations come from the 2021 directive /514 of March 22,

2021 relating to tax cooperation and its transposition into national law in Articles 1649 ter A to E of the General Tax Code (CGI). A harmonized system has been put in place for the declaration of income generated through platforms as well as the

automatic exchange of this information between Member States. Its implementation involves at least two categories of personal data processing. The first would be implemented at the platform level for the collection and transmission of

information relating to sellers or service providers-natural persons. The platforms will have the quality of data controller. The second would be implemented at the level of the tax administration for the analysis of declarations, any exchanges between

tax administrations, and the programming of controls. part of the ongoing transposition of the aforementioned directive. It thus defines the procedures for applying the general principles set by law, in particular the data to be collected and then declared to

the tax authorities. The Ministry specifies that at this stage four processing operations are envisaged. The first concerns the collection of declarations submitted by the platforms. The second, grouping and sending the data to the recipient States or

territories. The third, the identification and transmission to the taxpayer of the amounts of the sums collected and the platform that declared them. Finally, the fourth concerns the use of data in the context of tax audits and the pre-filled declaration of

income. It also specifies that it is waiting for the publication of all the regulatory texts transposing this harmonized system, before initiating discussions on the conditions for implementing the processing operations envisaged as well as their compliance with the regulations on personal data. staff. While the Ministry has already announced the drafting of Data Protection Impact Assessments (DPIAs) for the processing operations that will fall under its responsibility, the Commission recalls that it will be up to the platforms and the management General of Public Finances (DGFIP) to ensure that each of the planned processing operations complies with the regulations relating to the protection of personal data. details of the implementation of this processing. On the purposes of the processing The data collected by the tax authorities will be used for three purposes. First, they will enable France to comply with its commitments in terms of tax cooperation, resulting from Directive 2021/514 of March 22, 2021. The latter organizes in particular the exchange of information between tax administrations to counterbalance the cross-border dimension of platforms and the lack of effectiveness of tax rules that may result. Then, they will allow the seller or service provider concerned to facilitate their tax return by pre-displaying on their tax returns, the information transmitted by the platforms. Finally, the data collected will be cross-checked with the items declared as part of the tax audit programme. The Commission notes that the analysis of this data will not give rise to automated individual decisions in terms of audits. data categories The draft decree lists the categories of data contained in the declarations transmitted by the platforms to the tax administration. In addition to the identification elements specific to the platform, these are data relating to the following natural person service providers or sellers: surname and first name; date of birth; address of main residence; tax identification number or place of birth; if applicable, value added tax identification number; State or territory of tax residence; in relation to the rental of real estate: address, number of days and, if applicable, land registration number of each lot ;total amount of consideration collected during each quarter; number of transactions for which total consideration was collected; all fees, commissions or taxes withheld or levied by the platform operator during each quarter; id of the financial account into which the consideration is paid. In the event that the holder of the financial account is not the seller or the service provider, the name and surname of the holder as well as any other financial identification information concerning him are provided. The Ministry specifies that in practice when registering, the service provider or seller communicates the name and surname of the beneficiary as well as an IBAN number. The communication of the said information is essential for the tax authorities to identify the person who must actually be taxed. The Commission considers that the draft decree should incorporate the clarification provided by the ministry that only the IBAN would be collected in the

case concerned in order to precisely identify the financial identification information collected in this respect. On the rights of individuals Information of individuals will first be ensured by the platforms which indicate to the individuals concerned the information transmitted to the tax authorities concerning them. Secondly, the ministry specifies that information will be made available to users on the [impots.gouv.fr](http://impots.gouv.fr) website, without the content of this information being specified at this stage. The Ministry refers to the subsequent definition of the characteristics of the processing operations the creation of which does not fall within the scope of this draft decree. which will have to be defined within the framework of the implementation of the planned processing. On the retention period The platforms retain the data for a period of 10 years, in accordance with article 1649 ter D-I-2° paragraph 5 of the CGI. The draft decree specifies the starting point of this period. This duration, which is fixed by law, does not call for any particular observation. The Ministry nevertheless provides that for the processing that it will implement on the basis of the draft decree, the latter may provide for the retention of the data of ten years. It specifies in this respect that this duration corresponds to the right of recovery available to the administration in the event of hidden activities which may be exercised until the end of the tenth year following that for which the tax is due, in accordance with Article L. 169 of the Book of Tax Procedures. Given the wide scope of the processing that will be implemented on the basis of this text as well as their varied purposes, the Commission considers that the retention period of this data must be proportionate to the purposes of each processing and never exceed the maximum duration of 10 years provided for by the right of resumption in the event of hidden activities appears insufficiently justified since it would lead to keeping them in principle for a particularly long period and in the absence of demonstrated necessity. On interconnections The Ministry specifies that some of the processing intended to be implemented on the basis of the draft decree may be interconnected with the processing targeting fraud and valuation of requests (CFVR) for data relating to French tax residents. The decree of February 21, 2014 creating CFVR processing by the Directorate General of Public Finances provides that the data transmitted by the operators of collaborative platforms are processed in application of Article 242 bis of the General Tax Code. Insofar as the new system framed by the draft decree is intended to replace that provided for by the aforementioned article 242 bis, the Commission considers this interconnection to be legitimate in principle. It nevertheless draws the Ministry's attention to the actual conditions for implementing this possibility and in particular to ensure that the linking operation complies in particular with the categories of data and the accessors or recipients set by the regulatory acts. concerned. Indeed, to be lawful, the transfer of data from one database to another must comply with or contribute to the purposes pursued by the original database or those associated

with transmissions to recipients, the transferred data must be authorized to appear in the destination database and at least one person authorized to supply the destination database must constitute a user or recipient of the original database (CNIL, SP, May 27, 2021, Opinion on draft decree, LRPGN, no. 2021-061, published). In addition, the Commission notes that the interconnection for the benefit of URSSAF - National Fund provided for by the current system, will be maintained by the new system subject to the modification of article L.114-19-1 of the social security code (CSS). The latter provides for the transmission by the tax administration of some of the data collected from the platforms in order to allow the control and the fight against concealed work by URSSAF agents - National Fund. On transfers The system allows the exchange between tax authorities of the different Member States of the European Union (EU). These exchanges could also concern the States or territories with which France has concluded an agreement allowing the automatic and mandatory exchange of information under the amended Directive 2011/16/EU on administrative cooperation in the field of taxation. Article 2 of the draft decree provides for the establishment by decree of the list of all partner States or territories. The Commission notes that France has not to date signed any agreement allowing an exchange to a third country to the EU. It recalls that in this case, the data controller must ensure the adequacy of the level of data protection offered by the country of destination, in accordance with the regulations relating to the protection of personal data. security In the absence of knowledge of the characteristics of future processing intended to be implemented on the basis of the draft text, the Commission cannot comment and calls for particular vigilance on the technical and organizational methods that will be adopted in order to ensuring the security of processing. The President Marie-Laure DENIS