

Deliberation 2019-079 of June 20, 2019 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

Opinion Legal status: In force Date of publication on Légifrance: Tuesday, December 03, 2019 NOR:

CNIX1933313X Deliberation No. 2019-079 of June 20, 2019 providing an opinion on a draft decree amending the decree of 21

February 2014 creating by the Directorate General of Public Finances an automated treatment to fight against fraud called

"targeting of fraud and valuation of requests" (CFVR)

(request for opinion no. 1726052 v6)

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 amending the decree of February 21, 2014 creating by the general management of public finances of an automated processing to fight against fraud called fraud targeting and valuation of requests (CFVR); Having regard to Convention No. 108 of the Council of Europe for the protection of individuals with regard to automated processing 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 by competent authorities for the purposes prevention, investigation, detection and 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 I; Having regard to the general tax code, in particular its article 242 bis; Having regard to the book of tax procedures, in particular its articles L. 10, L. 81 and L. 229 to L. 231; Considering the penal code, in particular its articles 313-1 and following; Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its articles 31-I- 2° and 33; Having regard to decree n° 2019-536 of May 29, 2019 taken for the application of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Having regard to the decree of February 21, 2014 on the creation by the General Directorate of Public Finance of an automated treatment to fight against fraud called fraud targeting and valuation of requests; Having regard to deliberation no. of an order establishing by the Directorate General of Public Finances an automated treatment to fight against fraud called fraud targeting and valuation of requests (CFVR); After having heard Mr. Philippe-Pierre CABOURDIN, auditor in his report, and Mrs. Nacima BELKACEM, Government Commissioner, in her observations, Em and the following opinion: The Commission received an urgent request from the Minister for Action and Public Accounts for an opinion on a draft order amending the order of 21 February 2014 creating by the General Directorate of Public Finance of an automated treatment to fight against fraud called Fraud targeting and valuation of requests (CFVR). CFVR processing, based on data mining or data mining techniques,

has several functionalities: modeling predictive, the request for risk analysis, the search for atypical or inconsistencies and the search for links between different people or with professional entities. Initially implemented in 2014 as an experiment, in the context of fraud carried out by professional taxpayers, the scope of CFVR processing was made permanent in 2015 and extended at the same time as an experiment to natural persons involved in the operation of the entities professionals. This extension was made permanent in 2016, then this CFVR processing was extended in 2017 to individuals on an experimental basis until August 2019. At the same time, the functionalities of this processing were extended in order to allow the early detection of companies in difficulty, as well as the automatic sending of information requests to taxpayers following a reconciliation of information revealing inconsistencies in tax declarations. All of these modifications were the subject of an opinion from the Commission. The Commission notes that the draft referred to it was submitted to it on the basis of the provisions of Article 31-I-2° of law of January 6, 1978 as amended, which provides that a decree, taken after reasoned and published opinion of the Commission, authorizes the processing of personal data implemented on behalf of the State and whose purpose is the prevention, research, observation or prosecution of criminal offenses or the execution of criminal convictions or security measures. It recalls that in view of its characteristics, CFVR processing falls in principle under the provisions of Directive 2016/680 as transposed in Articles 87 et seq. of the amended law of 6 January 1978. Insofar as CFVR processing is likely to create a high risk for the rights and freedoms of natural persons, the Ministry of Action and Public Accounts carried out an impact assessment relating to the protection of personal data (AIPD), which was sent to the Commission with the request for an opinion in accordance with article 90 of the amended law of 6 January 1978. The Commission notes that the purpose of the draft decree is to add the data transmitted by the operators of collaborative platforms under data processed by CFVR processing in accordance with Article 242 bis of the General Tax Code resulting from Article 10 of Law No. 2018-898 of October 23, 2018 relating to the fight against fraud. The Commission recalls that it has always considered that CFVR processing must be surrounded by strong guarantees such as to ensure a high level of data protection given the issues raised by datamining, the combination and growing crossover of different detection tools and fight against fraud, the extent of the data processed and the innovative nature of the system. Firstly, article 1 of the draft decree provides for the addition of data transmitted by the operators of collaborative platforms in application of the Article 242 bis of the General Tax Code (CGI) with respect to economic and financial information for natural persons. The Commission notes that this addition is intended to take into account the changes brought about by Law No. 2018 relating to the fight against fraud

and, in particular, by its article 10, which amended the provisions of article 242 bis of the CGI by providing for the obligation for platform operators of collaborative economy to send the tax authorities an annual document summarizing the operations carried out by the users of these sites. IV to the CGI in its version resulting from the decree of December 27, 2018 taken for the application of article 242 bis of the CGI. In practice, the Commission notes that collaborative economy platform operators must in particular provide the surnames (family or usual), first names and date of birth of natural persons as well as the company name, usual name, SIREN number, the intra-Community VAT number or the registration number with the foreign tax authority for legal entities. They must also transmit to the tax authorities the total gross amount and the number of transactions carried out by each user. Furthermore, when known to the operator (in particular when the payment is made on the platform), the bank details of the account into which all or part of the amounts are paid to the user must be transmitted. It may be an account domiciled in France or in a foreign country. The Commission takes note of the clarifications provided by the Ministry according to which this information, given its bulk, cannot be processed manually and the guarantees that this data will only be used for: the detection of hidden commercial activities; the search for concealment of turnover or professional receipts which may have an impact in terms of corporation tax, professional income subject to tax on income or VAT; the concealment of receipts from the rental of real estate by individuals or companies. The Commission takes note of the addition of this type of data in view of the modification of article 242 bis of the CGI. It recalls that, if sensitive data within the meaning of article 6 of the modified law of January 6, 1978 were to be collected, the processing should be authorized by a decree in Council of State, in accordance with the provisions of article 31-1 of this same law. Secondly, article 2 of the draft decree aims to reduce the retention period of traces to one year, which does not call for any particular comment. Thirdly, article 3 of the draft decree provides that the rights of access and rectification are exercised with the CF1C office (86-92 allée de Bercy 75574 PARIS cedex 12) except with regard to data from management consultation applications and tax control of the Directorate General of Public Finances for which the rights of access and rectification are exercised with the center of public finances to which the applicant reports (...). This same article provides that restrictions may be made to the exercise of these rights, pursuant to the provisions of article 107 of the amended law of January 6, 1978, which does not call for any particular observation given the characteristics of CFVR processing. With regard to the right to information of the persons concerned, it takes note of the clarifications provided by the Ministry according to which the information of the persons concerned must be carried out via the publication of the regulatory act as well as on the site web.impots.gouv.fr. With regard to the right of opposition, article 3 of the draft decree specifies that it

is not intended to apply to this processing pursuant to article 110 of the amended law of January 6, 1978, which does not call for any particular comment. erasure and restriction of processing t, it recalls that these are provided for in Article 104 of the law of January 6, 1978 as amended. access, have been adapted to the planned processing. the obligation relating to the logging device, provided for in Article 25 of the aforementioned directive. However, it recalls that Article 37 of Law No. 2018-493 of June 20, 2018 provides for the possibility of such a postponement when such an obligation would require disproportionate efforts and emphasizes that the Ministry in no way justifies elements which would allow it to take advantage of this derogation, the consequence of which is to postpone the application of the obligations provided for in article 101 of the law of 6 January 1978 as amended. In any event, it notes that effective traceability (the date and the identity of the person who produced and launched the scripts) is implemented on the processing as well as the requests made by all the agents, or service providers on the work carried out as part of this experiment. from the previous observations, the Commission considers that the security measures as described by the data controller comply with the security requirement provided for in Article 101 of the law of 6 January 1978 as amended. ee. However, it recalls that this obligation requires updating the DPIA and its security measures with regard to the regular reassessment of the risks. President M.-L. DENIS