

Deliberation 2018-315 of September 20, 2018Commission Nationale de l'Informatique et des LibertésNature of the

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CNIX1833053XDeliberation No. 2018-315 of September 20, 2018 providing an opinion on a draft decree issued in application of article L. 153 A of the book of tax procedures (request no. 18015367)The National Commission for Computing and Liberties, Seizure by the Ministry of the Economy and Finance of a request for an opinion relating to a draft decree issued pursuant to Article L. 153 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 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 such data, and repealing Directive 95/46/EC;

Having regard to the book of tax procedures, in particular its articles L. 152, L. 153 A and R.* 152-1;

Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its article 11;

Considering the decree n° 2005-1309 of October 20, 2005 modified taken for the application of the law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms;

On the proposal of Mr. Philippe GOSSELIN, Commissioner, and after having heard the observations of Mrs. Nacima BELKACEM, Government Commissioner, Issues the following opinion:

The law of December 28, 2015 relating to the adaptation of society to aging created in the book of tax procedures (LPF) an article L. 153 A which provides that the tax authorities transmit each year to the departments, under the conditions provided for by decree in Conseil d'Etat taken after consulting the National Commission for Computing and Liberties, the information necessary for the assessment of the resources of the beneficiaries of the personalized autonomy allowance (APA) .

This draft decree, on which the opinion of the Commission is requested, is taken pursuant to this article and is intended to govern, on the one hand, the content of the request for the transmission of information addressed to the tax authorities, and on the other hand, the information that the latter communicate in response. On the data collected:

On this point, the committee notes that the registration number in the National Directory for the Identification of Individuals

(NIR) does not appear among the information exchanged.

It takes note of the fact that the draft decree will be amended to also remove the bank details from the request for information issued by the departmental councils, insofar as the latter are not authorized to collect them, in accordance with the provisions of article R. 232-41 of the social action and family code (CASF).

Subject to these reservations, the Commission considers that the data are adequate, relevant and not excessive in relation to the purposes for which they are collected. On the data retention period:

The draft decree also states that the data transmitted to the departmental councils are kept for up to two years after the death of the beneficiary. The committee takes note of the fact that the draft decree will be amended to retain the same retention period as that provided for in Article R. 232-46 of the CASF for the management of the APA by the departmental councils, namely six years. after the end of the service.

Subject to these reservations, the commission considers that the data is kept in a form allowing the identification of the persons concerned for a period which appears proportionate to the purposes of the processing. On security and confidentiality measures:

The Commission recalls that the data controller, pursuant to Article 32 of the General Data Protection Regulation, must take all necessary precautions to preserve the security of the data collected and processed, with regard to the nature of the data, the risks presented by the treatment. In particular, it must prevent unauthorized third parties from gaining access to it by means of physical, logical and organizational security measures, and ensure that adequate technical measures guarantee the confidentiality and security of the data exchanged. The Commission notes that the requests for information sent to the tax authorities come from an agent specifically appointed by the departmental council. This designation implies in particular the authorization of the person for the public management internet portal. This portal is implemented to facilitate and secure the exchange of information between public authorities and establishments, and tax administrations. Finally, the Commission recalls that the security requirement provided for by the aforementioned amended Article 32 requires updating security measures with regard to the regular reassessment of risks.

The draft decree does not call for any further comment.

For the President:

Deputy Vice-President,

