

Deliberation 2020-123 of December 10, 2020 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

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2020-123 of December 10, 2020 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" (request for opinion no. 1726052 v8) The National Commission for Computing and Liberties,

Seizure by the Ministry of the Economy, Finance and Recovery of a request for an opinion concerning a draft decree amending the decree of February 21, 2014 on the creation by the general directorate of public finances of an automated processing fight against fraud called targeting of fraud and valuation of requests,

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 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 on the competent authorities for the purposes of prevention and detection of investigation and prosecution of criminal offences, or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA;

Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its article 31-I-2°;

Having regard to Law No. 2019-1479 of December 28, 2019 on finance for 2020, in particular its article 154;

Having regard to decree n° 2019-536 of May 29, 2019 as amended, taken for the application of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms;

Having regard to deliberation no. 2019-114 of September 12, 2019 providing an opinion on draft article 9 of the draft finance law for 2020; After having heard Mr. Philippe-Pierre CABOURDIN, auditor, in his report, and Mr. Benjamin TOUZANNE, Government Commissioner, in his observations, Issues the following opinion: The processing targeting of fraud and valuation of requests (CFVR), based on data mining or data mining techniques, has several functionalities: predictive modelling, 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 the 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 professional entities. 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 pose a high risk to the rights and freedoms of natural persons, the Ministry carried out an impact assessment on the protection of personal data (DPIA), which was sent to the Commission with the request for opinion in accordance with article 90 of the amended law of January 6, 1978. As a preliminary point, the Commission recalls that article 154 of law no. for a period of three years, the tax and customs administrations to collect and exploit the freely accessible content clearly made public by users on the websites of the online platform operators mentioned in 2° of I of Article L. 111-7 of the Consumer Code (hereinafter platforms and social networks). This collection should make it possible to search for clues relating to the commission of certain offenses listed exhaustively by law, in particular for the tax administration the exercise of an occult activity and false tax domiciliation abroad. It observes that the terms of application of the aforementioned collection system, which will be governed by a Conseil d'Etat decree which is the subject of an opinion from the Commission, have consequences on CFVR processing. This draft decree thus aims to take into account the transmission and analysis of certain data collected on platforms and social networks in the CFVR processing in order to determine whether these constitute clues making it possible to characterize one of the offenses sought under the provisions of article 154 of the finance law for 2020. Having recalled these general elements, the Commission intends to make the following observations. Firstly, Article 1 of the draft decree provides for adding to the title of processing functionalities the analysis by comparing certain data collected on platforms and social networks with those already recorded in CFVR, which is likely to explain the operation of the system as a whole Secondly, 3° of article 2 of the draft decree specifies the data from the

collection system of the aforementioned article 154 recorded in the CFVR processing, namely the indicators and data of identification of the account holders of the web pages. In addition to the indicators and the identification data of the account holders of the web pages registered in CFVR and mentioned in the draft decree, the AIPD specifies that the information indicating geographic or location data concerning work undertaken to find people who are falsely domiciled abroad. On this point, the Commission takes note of the ministry's commitment to amend the draft decree to include, under the categories of data collected, indicators relating to geographical locations. It also emerges from the documentation submitted that the so-called raw data collected directly on online platforms and social networks (in particular video, photography, writings, etc.) would not be transmitted and recorded in the CFVR processing, which the Commission takes note of. Thirdly, the Commission notes that article 3 of the draft order reproduces identically the retention periods for data provided for by article 154 of the aforementioned finance law in CFVR processing and specifies that the retention period attached to this data runs from the date of their collection on the websites of online platform operators. It also notes that the last paragraph of Article 3 of the draft decree pre clarifies that the data of which the tax agents are recipients as well as the information which is provided by these agents are kept for three years. The ministry clarified that this three-year period will not apply to data from the collection mechanism of article 154 of the aforementioned finance law for 2020, which will be kept in accordance with the periods provided for directly by the finance law for 2020. The Commission notes that the draft order will therefore be amended to explicitly show the structure of the retention periods thus adopted. Finally, the Commission notes that the security measures remain unchanged. The President,

M. L. Denis