

NATIONAL COMMISSION ■ ON DATA PROTECTION

OPINION/2019/9

The Ministry of Foreign Affairs, through the Directorate-General for European Affairs, asked the National Data Protection Commission (CNPd) to comment on the Partnership and Cooperation Agreement between the European Union and its Member States, on the one hand, and the Republic of Singapore, on the other hand ('the Agreement').

The request made and the opinion issued now derive from the attributions and powers of the CNPD, as an independent administrative entity with powers of authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and by the paragraph 4 of article 36 of Regulation (EU) 2016/679, of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of paragraph 1 of article 21. ° and no. 1 of article 22, both of Law no. 67/98, of 26 October, amended by Law no. 103/2015, of 24 August (Personal Data Protection Law - LPDP).

The Agreement under consideration, due to its strategic nature, which is evident from the outset in its name and also in the list of its principles and objectives, assumes a naturally comprehensive form that covers a partnership between the European Union and the Republic of Singapore, in the sense of "strengthening their bilateral relations, maintaining a comprehensive dialogue and promoting the deepening of cooperation between them on factors of common interest" (cf. Article 2).

Pursuant to the same precept, the Parties agree that cooperation will cover the areas of human rights, democracy and fundamental freedoms; data protection; disarmament and non-proliferation of weapons of mass destruction; combating various types of serious crime with international repercussions; technical barriers to trade; terrorism; customs; competition; services; intellectual property; legal cooperation; migration; money laundering and terrorist financing; illicit drugs; employment and social affairs.

Although the Agreement largely focuses on promoting common approaches in international fora, exchanging experiences, information on legislation and sharing best practices, exchanging views, forms of cooperation are also envisaged which necessarily involve the processing of personal data.

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This processing of personal data is embodied in several areas of application of this Agreement, which does not regulate the concrete way in which this foreseen cooperation is carried out, and therefore does not contain specific rules regarding the processing of personal data that result from the exchange of information in the different domains. .

However, it follows from Article 1(1) that 'the Parties shall uphold democratic principles, the rule of law and fundamental human rights, as set out in the Universal Declaration of Human Rights and other relevant international instruments on human rights to which they are Parties. They also confirm their common values as expressed in the Charter of the United Nations and their commitment to the pursuit of the Millennium Development Goals.”

Article 5(2)(b) of the Agreement also prescribes the exchange of information on “terrorist groups and their support networks, in accordance with applicable national and international law”.

Finally, Article 42(1) provides that 'the Parties may, by mutual agreement, extend the scope of this Agreement in order to deepen the level of cooperation, in particular by complementing it by concluding agreements or protocols on specific sectors or activities’.

As this Agreement appears to have characteristics similar to a framework agreement, the CNPD understands that this is not the appropriate instrument to regulate, when applicable, the processing of personal data that may result from its execution.

However, as Portugal is a party to this Agreement, as a Member State of the Union, it is obliged to comply with national and European rules on data protection¹, in particular with regard to international transfers of data to a third country - such as Singapore. - it is therefore essential to assess whether that State guarantees an adequate level of protection.

Furthermore, in this regard, it should be noted that in Article 18, the Parties propose to improve the level of protection of personal data, taking into account the most

1 Whether articles 19 and 20 of the LPD, Council Framework Decision 2008/977/JHA of 27 November 2008, or Directive (EU) 2016/680 of the Parliament and of the Council of 27 April 2016, to be transposed into the domestic legal order shortly.

demanding, namely those contained in the United Nations guidelines on the computerized processing of personal data, which is very positive.

It should be noted that in the field of data protection legal instruments, the Republic of Singapore has, since 2012, a personal data protection law, called the Personal Data Protection Act 2012 (PDPA)², applicable to both the public and private sectors, substantiating a regime very close to other countries and in particular to the European Union. Other legal instruments are in force in Singapore regulating specific sectors with a view to strengthening guarantees for the protection of citizens' personal data

There is an authority in Singapore with powers to supervise the application of the legal data protection regime in force with sanctioning powers, the Personal Data Protection Commission Singapore. It is an authority with broad attributions covering various sectors of activity with the aim of creating a climate of trust in the economic sector for a better development of national and international trade.

It should be noted that this authority is part of the government structure, reporting its actions to the Minister in accordance with article 8 of the PDPA, and therefore, the independence considered, in the light of Union law, does not appear to be assured.

European Union, as essential to recognize an adequate level of protection of personal data.

In short, the materialization of cooperation actions under this Agreement, which involve the processing of personal data, must be regulated through specific bilateral or multilateral agreements, which contain all the necessary provisions on the protection of personal data. Such agreements shall be subject to the CNPD's assessment, whether negotiated bilaterally or through the Union.

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² Available at <https://sso.agc.gov.sg/SL/PDPA2012-S149-2013?DocDate=20180329>

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