

I. Order

1. The Directorate-General for Social Security submitted to the National Data Protection Commission (CNPD), for an opinion, a draft Convention on Social Security (hereinafter referred to as the Convention) to be concluded between the Portuguese Republic and the Democratic Republic of Timor-Leste. East.

2. The CNPD issues this opinion within the scope of its attributions and powers, as the national authority to control the processing of personal data, in accordance with the provisions of subparagraph c) of paragraph 1 of article 57 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of article 3, paragraph 2 of article 4 and in subparagraph a) of paragraph 1 of article 6, all of Law no.

II. Analysis of the Convention on the Processing of Personal Data

3. The Convention aims to regulate the relationship between the two signatory States (hereinafter Parties) within the scope of Social Security, enshrining rules that guarantee acquired rights and rights in the process of being acquired under the applicable national legislation in relation to matters that come itemized in the article

4° in relation to each of the Parties and in relation to the persons identified in article 2.

4. As is clear from article 24, the implementation of this Convention presupposes the transfer of personal data from one Party to another through the competent entities of the Democratic Republic of Timor-Leste and of the Portuguese Republic that are identified in paragraphs f) and g) of Article 1.

5. Under the terms of article 46 of the GDPR, the Portuguese Republic can only transfer personal data to a third country or international organization located outside the European Union, such as the Democratic Republic of Timor-Leste, if that country present adequate guarantees and on condition that the data subjects enjoy enforceable rights and effective corrective legal measures.

6. The adequacy of the level of data protection must be assessed in terms of all the circumstances surrounding the transfer of

data, taking into account, in particular, the nature of the data, the purpose and duration of the planned treatments, the country of origin and the country of final destination, the rules of

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law, general or sectoral in force in the State in question, as well as the rules and security measures that are adopted.

7. In the specific case, the Democratic Republic of Timor-Leste does not benefit from an adequacy decision by the European Commission, under the terms of article 45 of the GDPR, nor is it a signatory to Convention 108 of the Council of Europe, open to third countries, by that it is necessary to verify if there is specific legislation of the Democratic Republic of Timor-Leste in this matter and if it guarantees the same protection as the Portuguese legislation.

8. In fact, it appears that although the right to the protection of personal data is constitutionally protected (article 38,°)1, the Democratic Republic of Timor-Leste does not have specific legislation on access to information and the protection of data and that an entity with regulatory and supervisory powers regarding personal data has not been established.

9. The convention devotes two articles exclusively to data protection: article 1, which takes care of the definition of the concepts "personal data", "processing of personal data* (paragraphs o) and p)), and article 24 .°, which is fully dedicated to this matter. It should be noted that the definitions referred to are fully in line with the definitions of these concepts in the GDPR.

10. The care taken in defining the concepts used in the area of personal data protection is welcomed, ensuring that the Parties have a univocal understanding in this area.

11. Article 24 enshrines the principles of processing of personal data, namely the purpose limitation principle, establishing that personal data are not processed incompatible with the specific purposes of this Convention, the principle of data minimization, accuracy, integrity and confidentiality and limitation of retention. With regard to the latter, the CNPD recommends establishing in the text of the Convention a maximum retention period that takes into account the periods legally established in national

legislation.

12. The text of the Convention is silent on the procedures to be adopted in the event of a breach of personal data. Thus, the CNPD recommends the introduction of a new paragraph that expressly stipulates that if one of the parties becomes aware of a personal data breach, it must inform the other party as soon as possible.

M. All citizens have the right to access computerized personal data or data contained in mechanical and manual records that concern them, and may demand their rectification and updating, and the right to know the purpose for which they are intended.

2. The law defines the concept of personal data and the conditions applicable to its treatment.

3. It is expressly prohibited, without the consent of the interested party, the computerized processing of data personal data relating to private life, political and philosophical convictions, religious faith, party or trade union affiliation and ethnic origin”.

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as quickly as possible and use reasonable and appropriate means to correct the personal data breach and minimize its potential adverse effects, in particular by notifying the data subject of the existence of a personal data breach, without undue delay, in cases where such a breach is likely result in a high risk to the rights and freedoms of the individual concerned. It also suggests that the Convention defines the procedures for communication to the data subject.

13. Article 24(2)(e) states that each Party ensures “that no onward transfer of personal data to a third country or international organization takes place without prior authorization from the competent authority of the other Part”. The CNPD recommends adding to the text that this transfer is only possible if the recipient third parties undertake to respect the data protection principles and guarantees included in the Convention.

14. Regarding the rights of data subjects, as a preliminary note, the CNPD recalls that the Convention must ensure that data subjects enjoy enforceable and effective rights. Thus, in addition to the enumeration of these rights, the Convention must establish mechanisms that ensure the application of the rights in practice and in case of violation of the rights of data subjects, it must contemplate appropriate corrective measures.

15. The Convention provides for the right of access, rectification and erasure and the right of appeal to an independent or judicial entity, and these rights may be exercised directly or through the competent institution of the other Party. However, no deadline is set for the competent authority or institution to guarantee these rights to the holder, so the CNPD recommends determining it.

16. As for the right of access, the text of the Convention must provide that the data subject also has the right to access specific information regarding the processing, including the purpose of the same, the categories of personal data in question, the recipients to whom personal data are disclosed, the expected retention period and the possibilities of appeal.

17. It appears that with regard to the rights of data subjects, nothing is said about the right to transparency. The data transfer entity must, in addition to a general notification on the Convention, provide individual information to data subjects in accordance with the notification requirements of Articles 13 and 14 of the GDPR. The CNPD recommends the consecration of this right and its densification in the text of the Convention.

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III. Conclusion

18. On the above grounds, the CNPD recommends reviewing Article 24 of the Draft Convention to be signed between the Portuguese Republic and the Democratic Republic of Timor-Leste, in order to safeguard effective protection of the data subjects involved.

Lisbon, May 20, 2022

Maria Cândida Guedes de Oliveira (Reporting Member)