/ / NATIONAL DATA PROTECTION COMMISSION

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OPINION/2019/83

I. Order

The Committee on Constitutional Affairs, Rights, Freedoms and Guarantees asked the National Data Protection Commission (CNPD) to issue an opinion on Bill No. 30/XIV/1,a, which "regulates the activity of professional representation of interests ("Lobbying")".

The request made and the opinion issued now derive from the attributions and powers of the CNPD, as the national authority for controlling the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and paragraph 4 of article 36 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, no. Article 4(2) and Article 6(1)(a), all from Law No. 58/2019, of 8 August.

The assessment of the CNPD is limited to the rules that provide for or regulate the processing of personal data.

II. appreciation

The Bill in question establishes the rules of transparency applicable to the interaction between public entities and private entities that intend to ensure legitimate representation of interests and proceeds to the creation of a Transparency Register of Interest Representation to work with the Assembly of the Republic.

Article 2 of the Project specifies that the activities of legitimate representation of interests are those "exercised, in compliance with the law, by natural or legal persons, with the aim of influencing, directly or indirectly, the preparation or execution of the public policies, legislative and regulatory acts, administrative acts or public contracts, as well as the decision-making processes of public entities, on their own behalf, of specific groups or third parties".

For what is relevant, within the scope of the CNPD's attributions, it is important to pay attention to the provisions of article 4, which requires the creation of a public transparency register for public entities (article 3 listing public legal persons, as well as bodies and services

that integrate such concept for the purposes of said Project). Alternatively, public entities are allowed to use the Transparency Registry of Interest Representation (RTRI) managed by the Assembly of the Republic to fulfill the obligations defined in the same Project.

1. Article 5 of the Project provides for the information that must be included in the aforementioned transparency register. Considering that, as explained in article 2, the entities to be registered may correspond to natural persons and, even when they are legal persons, identification data of the holders of the governing bodies and the person responsible for the representation activity are collected, this registration corresponds to the processing of personal data, pursuant to Article 4(2) of the GDPR.

Although the information listed in Article 5(1) corresponds to personal data that are not specially protected (that is, information that does not fall under the provisions of Article 9(1) of the GDPR), it does not fail to reveal aspects related to the private life of data subjects, so its public disclosure raises the greatest reservations for the CNPD. At issue is the information regarding the address, telephone, e-mail, as well as the identification of annual income arising from the activity of representing interests. In fact, the fact that the register has a public nature and that, in paragraph 2 of article 9 of the Project, reference is made to the «portal for each register», it can be concluded that this information will be publicly available on the Internet, therefore , in free access mode by anyone.

However, the fact that the contact details of people who carry out the activity of professional representation of interests are adequate and necessary for the public entity with which they will represent their respective interests, does not imply the adequacy and necessity of their disclosure on a portal online. -iine. The reasons for transparency that justify the registration of this activity and the different steps in which it takes place do not extend to the public disclosure and knowledge, by any third party, of the contact details and address of individuals who carry out this activity, so there the frontier of transparency must be drawn.

It should be noted that this information, once made available on the Internet, is perpetuated there, and can be accessed and used for the most varied purposes, not all of which are legitimate, without

that it is possible from the outset to exercise effective control over the reuse of personal data and ensure compliance with the principles and rules of protection of personal data in force in Portugal, with an impact on the legal sphere of data subjects that goes far beyond the appropriate and necessary for public scrutiny of lobbying activity. Such a provision therefore violates the principles of proportionality and the minimization of personal data, enshrined in Article 5(1)(cj) of the GDPR, promoting the disproportionate restriction of rights, freedoms and guarantees (here, in particular, the right to respect for private life and the right to protection of personal data, enshrined in articles 7 and 8 of the Charter of Fundamental Rights of the European Union and in articles 26 and 35 of the Constitution of the Portuguese Republic).

In fact, the disproportionality of such a legal provision is evident when one considers that, in this way, those who professionally promote interests with public entities would be subject to greater scrutiny than the holders of the bodies of these entities, i.e., than the holders of political office and the holders of high public office. In fact, for them, Law No. 52/2019, of 31 July, provides in Article 17(2) for the online disclosure of personal data, with the exception of those relating to "Sensitive personal data such as address, civil and tax identification numbers, mobile and telephone numbers, and e-mail address; [...] Data that allow the individual identification of the residence, except for the municipality of location, or vehicles and other means of transport of the holder of the position».

The impact of this legal regime on the privacy of data subjects is, therefore, much smaller than that projected here for representatives of interests with public entities, which, considering the nature of the functions performed by each of the universes of data subjects, data, objectively constitutes a disproportionate and unfair outcome.

In this way, the CNPD recommends that, with regard to natural persons, the data relating to address, telephone and e-mail, provided for in article 5 of the Project, be safeguarded from public disclosure.

2. The CNPD also recommends reviewing the provisions of subparagraph a) of article 1 of the Bill, since the provisions in the final part of this provision are in clear contradiction with the RGPD.

The rule in question imposes on registered entities - among which, as noted, individuals may be included -, the duty to "comply with the declarative obligations provided for in this iei, or in a complementary regulatory act, accepting the public nature of the elements contained in the their statements'. However, without questioning the imposition of declarative obligations, the

prescription of acceptance - or the presumption that the fulfillment of these obligations means acceptance - of the public character of the elements contained in their declarations is no longer reached. Of the two, one: either the legislator assumes that it imposes the public disclosure of information, or makes its lawfulness dependent on the consent of the data subjects (in which case, such disclosure would not be admissible in the absence of consent).

In fact, at least when the declarants are natural persons, consent to the disclosure of information concerning them must be manifested through an unequivocal, informed, free and specific positive act, pursuant to Article 4(11) and Article 6(1)(a) GDPR.

However, this legal provision, by binding to the fulfillment of a legal duty a supposed manifestation of will in accordance with the publicity of personal data, in the context of a data processing that is imposed by law, is in contradiction with the GDPR, as it does not guarantee the freedom of such manifestation of will.

In view of the uselessness and incongruity of such an association or presumption of consent, as well as the total lack of freedom of the presumed manifestation of the same, in violation of paragraph 11) of article 4 of the GDPR, the CNPD recommends the elimination of the second part of the provisions of paragraph a) of article 7 of the Bill.

3. The provisions of paragraph 2 of article 9 of this Project also give rise to some reservations, as it requires the publication of the application of sanctions provided for in paragraph 1.

The CNPD understands the need for public entities to be able to verify the legitimacy of a natural person to promote interests, but the means provided for this purpose have an impact that goes beyond what is necessary to fulfill that purpose, in violation of paragraph c) of Article 5(1) of the GDPR. In fact, the CNPD believes that it is appropriate and sufficient, for this purpose, that this information be made available on the Internet, but with access restricted to public entities provided for in article 3 of the Project

- for this purpose, it may be justified to make this information available, in restricted access, in the RTRI of the Assembly of the Republic.

Thus, the CNPD recommends the revision of paragraph 2 of article 9 of the Bill, in order to limit access to the registration of sanctions to public entities.

4. Finally, the CNPD recommends that, in compliance with the principle of protection of personal data from conception - specifically enshrined in article 25 of the RGPD -, and the principle of data minimization (provided for in subparagraph c) of no. 1 of article 5 of the GDPR), the RTRI, as well as the other databases created under the terms of this Project, are de-indexed from search engines.

In fact, it is clarified that the same recommendation applies to the processing of personal data in which the online publication of personal data relating to holders of public offices and high public positions is embodied, within the scope of Law No. 52/2019 , of the 31st of July.

III. Conclusion

Based on the above grounds, the CNPD recommends:

i. That personal data relating to address, telephone and e-mail be safeguarded from public disclosure, in parallel terms to those provided for in paragraph 2 of article 17. Law no. 52/2019, of 31 July, under penalty of violation the principles of proportionality and the minimization of personal data;

ii. The elimination of the second part of the provisions of paragraph a) of article 7 of the Bill, regarding the acceptance of the public nature of the data, given the uselessness and incongruity of such a presumption of will, as well as the total absence of freedom from (presumed) expression of will, in violation of the GDPR;

iii. The revision of paragraph 2 of article 9 of the Bill, restricting access to the registration of sanctions to public entities, under penalty of violating the principles of proportionality and minimization of personal data;

iv. The de-indexation of search engines from personal information contained in the transparency register of the Assembly of the Republic (RTRI), as well as in other databases

data created under this project, in line with the principle of data protection by design, enshrined in Article 25 of the GDPR.

Approved at the plenary meeting of December 10, 2019.

Filipa Calvão (President)