

I. Order

1. The General Directorate of Foreign Policy of the Ministry of Foreign Affairs submitted to the National Data Protection Commission (hereinafter CNPD), for an opinion, the Treaty on the Electronic Transmission of Requests for International Legal and Judicial Cooperation between Central Authorities, signed in Medellín on the 24th and 25th of July 2019.
2. The CNPD issues an opinion within the scope of its powers and competences as an independent administrative authority with powers of authority to control the processing of personal data, conferred by paragraph 2 of article 30 in conjunction with paragraph 1 of article 43 .° and with subparagraphs a) and c), of paragraph 1 of article 44, all of Law n.° 59/2019, of 8 August.
3. The text of this Treaty had already been submitted to the CNPD, which at the time issued Opinion No. 50/2018, of 30 October. It is noted, however, that the recommendations made at that time regarding issues of protection of personal data were not accepted, so the opinion issued remains relevant. However, since there has been an evolution in the legal data protection regime in Portugal, it is justified to issue a new opinion that updates the text only to align the normative references with the new legal framework of the GDPR.
4. It should be noted that the CNPD, in the aforementioned Opinion, as a previous note, had warned of the deficient translation of the Treaty text. Thus, the changes introduced are only intended to improve the terminology used, although several expressions that are not legally appropriate are still present. See, for example, paragraph 2 of article 11, 'This Treaty shall enter into force for an indefinite period', or article 15, entitled 'Dispute settlement'. Therefore, a new revision of the text is suggested in order to provide it with adequate legal terminology.

II. Analysis

5. The Treaty aims to regulate the use of the Iber@ electronic platform as a formal and preferential means of transmitting requests for international legal and judicial cooperation between Central Authorities.
6. It appears, however, that the Treaty maintains the specific issues in terms of data protection and on which the CNPD

opportune pronounced itself, so it follows closely Opinion No. 50/2018, of 30 of October.

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PAR/2021/99

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7. Throughout the Treaty, the concerns to guarantee the security and confidentiality of communications carried out through the Iber@ platform are highlighted, expressed in particular in articles 6. (Requirements for the operation of Iber@) and 7. (Powers and Responsibilities of the Secretariat General). From the point of view of data protection, these measures are adequate but not sufficient, since they are only aimed at the information that is transmitted, not considering the information that is retained on the platform. Thus, the Treaty must also rule on the security and confidentiality of data that are processed by the Iber@ platform outside the context of communication.

8. In particular, the Treaty must identify the possible treatments that the Iber@ platform allows to carry out on the data, the form of storage and the storage periods of the data, in compliance with the principle of limitation of conservation provided for in subparagraph e) of paragraph Article 5(1) of the GDPR.

9. In turn, Article 6(2) of the Treaty states that Iber@ will provide each user of each Central Authority with the corresponding electronic signature that will necessarily be used in each transmission of requests for legal and judicial cooperation international service carried out through Iber@.

10. It is not clear from the text which mechanisms for the operation of electronic signatures will be provided to users. Since they are digital certificates, which are the mechanisms commonly used for the operation of digital signatures, they must be made available to users through secure channels, different from those in which they are used (in this case, the Iber@ platform). Thus, the Treaty must rule on the channel to be defined for the secure distribution of electronic signature mechanisms.

11. Finally, audit mechanisms are not described that allow the person responsible for the Iber@ platform (according to Article 7

of the Treaty, the General Secretariat of the Ibero-American Network for International Legal Cooperation) to identify who did what, or detect possible situations of abusive use.

12. The Treaty must therefore describe audit mechanisms that make it possible to link users to transactions carried out at a given time.

III. Conclusion

13. Based on the above grounds, the CNPD recommends:

a) The definition of the processing of personal data that the Iber@ platform allows to be carried out, as well as the way of storing the data and the respective retention periods;

PAR/2021/99

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National Data Protection Commission

b) The reformulation of article 6 in order to clarify the channel for the secure distribution of electronic signature mechanisms; and

c) Provision of audit mechanisms that allow users to be associated with operations carried out at a given time.

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