

NATIONAL COMMISSION

DATA PROTECTION

OPINION/2019/48

I. Order

The Office of the Secretary of State for Justice asked the National Data Protection Commission (CNPd) to issue an opinion on the draft diploma that aims to amend Regulatory Decree No. and regulated some aspects and matters contained in Law No. 78/2017, of 17 August, which creates a simplified cadastral information system and the Single Building Counter (BUPi).

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 of Law no. 58/2019, of August 8).

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

II. appreciation

1. The first observation on the draft regulatory decree now under consideration (hereinafter, Draft) concerns the new legal diploma that it has developed, which maintains in force and generalizes the application of the simplified cadastral information system, established by the Law No. 78/2017, of August 17 - Law No. 65/2019, of August 23.

The CNPD cannot fail to point out the fact that this legal instrument, which provides for and regulates the processing of personal data, was not subject to its consideration in any of the stages of the legislative procedure (therefore, neither as a proposal for a law by the Government, nor in the scope of parliamentary procedure), as required by Article 36(4) of the GDPR. In any case, as the provisions of the law are directly relevant for the assessment of this regulatory project, it is noteworthy that the aforementioned legal diploma determines the communication of a set of personal data (relating to the identification and domicile of the owners of the buildings registered in the rural and urban building matrices) by the Tax Authority and

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Customs Service (AT) on the platform called Balcão Único do Prédio (BUPi), based on a protocol to be signed between the AT and the Instituto dos Registos e Notariado, I.P. (IRN) - cf. no. 7 of article 1, of Law no. 65/2019.

And it reaffirms the duty of the entity responsible for the simplified cadastral information system and for BUPi - the IRN - to guarantee the interoperability of data held by the entities referred to in article 27 of Law No. 78/2017, of 17 August .

It is also worth noting that the same diploma sets out the legal regime for the protection of personal data, when it provides for the publication of procedures and registration information and access to registration information by individuals and State entities and services and other public entities - cf. Article 4(1)(e) and 4(3). And in article 6, the Building Identification Number is regulated, which allows access to cadastral information with minimization of the impact of the processing of personal data in the context of such access.

Finally, it is worth mentioning the provision for the creation, at the level of the central public administration, of a Technical Coordination Center, integrated in the Ministry of Justice, with powers of coordination, decision and support, even if the determination of the legal nature of such body, as well as its specific competences, be referred to government ordinance - cf. no. 1 and no. 3 of article 5 of Law no. 65/2019.

2. Turning now to the analysis of the Project, we begin by pointing out that the CNPD is unable to determine the adequacy of the attribution to the Technical Coordination Center of competences, whose exercise involves processing personal data, which until now are the responsibility of the AT or the IRN - cf. Article 9(2) and Article 17(1) of the Project. In fact, the insufficient terms in which the creation of that body is foreseen, in article 5 of Law no. .

Furthermore, some of the recommendations made by the CNPD on the first version of the draft regulatory decree that regulates Law No. , perhaps due to the urgency of regulating the

1 Accessible at https://www.cnpd.pt/bin/decisoos/Par/40_52_2017.pdf

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regime, at the time were not followed, which maintain all relevance in the face of the new legal regime for the protection of personal data.

Therefore, it is insisted that:

The. The categories of personal data processed in the context of the simplified cadastral information system and BUPi must be specified, when this regulatory document is intended to serve as regulatory support, in the development of the law, the processing of personal data legally provided for; whereas paragraph 1 of article 27 of Law no. 78/2017, of 17 August, does not specify the categories of personal data that make up the “relevant information” for the purpose of implementing the simplified cadastral information system and BUPi and that article 6, no. 1, of Regulatory Decree no. 9-A/2017, of 3 November, presents the list of information necessary for the structure of the attributes of the georeferenced graphic representation (RGG) by way of example, reiterates the indispensability of eliminating the adverb specifically inscribed in paragraph 1 of article 6 of the Regulatory Decree.

In fact, the use of the adverb “namely” is not admissible, when it is intended to define the normative basis that legitimizes the processing of personal data, as it leaves room for the extension of its object, through the extension of the categories of personal data. , under the terms of the proem in paragraph 1 of article 6 of the Regulatory Decree, it will be possible, in the abstract, to extend the object of the interconnection of personal data that is intended to regulate by the administrative entities responsible for the processing , when, strictly speaking, the law must be required and, through this reference to administrative regulation, the regulatory decree is to precisely define the terms in which such data processing can be carried out. Otherwise, the CNPD cannot , in these open terms, conclude that the data to be processed is proportional, in accordance with the provisions of Article 5(1)(c) of the GDPR.

B. Also with regard to paragraph 1 of article 6, it should be noted that the reference contained in subparagraph b) to the 'rural and/or urban matrix article' does not respect the scope of application of Law No. 78/ 2017, of August 17, nor of Law No. 65/2019, which is now

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come to develop. Indeed, article 2 of that law determines that the simplified cadastral information system and the measures necessary for its creation only apply to rural and mixed buildings. When urban buildings are excluded, the reference to the matrix of urban buildings is not reached for the purpose of their georeferenced graphic referencing, which is only relevant for the purposes of the simplified cadastral information system, as also stems from the provisions of paragraph 2 of article 1. ° of the same legal diploma. And Law No. 65/2019 does not extend the regime to urban buildings.

In these terms, the CNPD understands that the wording of subparagraph b) of paragraph 1 of article 6 of the Project must be changed, by eliminating the reference to the urban matrix article.

In relation to BUPi, article 20 provides, in paragraph 3, for the authentication of employees of public entities identified in article 21 of Law no. 78/2017, of 17 August.

In this regard, the CNPD draws attention to the fact that the mechanisms for authenticating employees must be made available by public entities, underlining the importance of ensuring that such mechanisms do not contravene the provisions of national law, in particular with regard to the use of the citizen card as a means of such access.

In fact, Article 18-A of Law No. 7/2007, of 5 February, last amended by Law No. 32/2017, of 1 June, allows the citizen's card to serve as a form of to certify a certain professional attribute, but this can only occur, under the terms of the same legal precept, by the will of the citizen himself, which implies conditions for the development of the professional activity that guarantee the freedom of expression of such will. However, in the context of labor relations of hierarchical dependence, as are those that characterize the Public Administration, such an expression of will is hardly free, given that the CNPD is aware that there are administrative entities, some with special responsibilities in this matter, which are to oblige its workers to use the citizen's card as a form of authentication, in clear violation of the provisions of the aforementioned article 18-A of Law No. 7/2007.

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d. Finally, with regard to the interoperability regime, enshrined in article 23, the vague content of paragraph 4 is noted. In fact, one may wonder what is the relevance and usefulness of a precept that, strictly speaking, seems devoid of normative content, i.e., not defining which service is provided by the Public Administration Interoperability Platform, nor the appropriate security measures, which makes it impossible for the CNPD to pronounce on this point.

In addition, by determining the definition by regulatory decree of the conditions of operation and interoperability of BUPi, it is strange that this Project continues to be silent on that aspect of the regime, which is obviously essential for the functioning of BUPi.

It is therefore recommended to take advantage of the present revision of Regulatory Decree No. 9-A/2017, of 3 November, to comply with the provisions of that legal diploma.

III. Conclusion

1. The CNPD notes that Law No. 65/2019, which maintains in force and generalizes the application of the simplified cadastral information system (established by Law No. 78/2017, of 17 August), has not been submitted to its consideration at any stage of the legislative procedure, in breach of Article 36(4) of the GDPR.

2. Regarding the Draft regulation under consideration here, which amends Regulatory Decree No. 9-A/2017, of November 3, the CNPD:

i. It notes, for the reasons set out above, that it cannot comment on the adequacy of attribution to the Technical Coordination Center of the powers provided for in Article 9(2) and Article 17(1) of the Project, the exercise of which involves processing of personal data, which until now are the responsibility of AT or IRN;

ii. Regrets the fact that this project continues to be silent on the definition of the operating and interoperability conditions of BUIP, in violation of the

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subparagraph d) of paragraph 1 of article 25 of Law no. 78/2017, of 17 August, recommending that the present revision of Regulatory Decree no. 9-A/2017, of 3 August November, to comply with the provisions of that legal diploma.

3. The CNPD also reinforces part of the observations made regarding the draft of the Regulatory Decree no. that, on the grounds set out above:

i. Recommends the elimination of the adverb specifically inscribed in paragraph 1 of article 6 of the Regulatory Decree, as well as the reference in the same provision to the urban matrix article,

ii. Alerts to the circumstance that the mechanisms for the authentication of employees must be made available by public entities, underlining the importance of ensuring that such mechanisms do not contravene the provisions of national law, in particular with regard to the use of the citizen's card as a means of such access.

Lisbon, August 23, 2019

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Filipa Calvão (the President, who reported)