

National Data Protection Commission

OPINION/2023/27

## I. Request

1. On February 23, 2023, the Commission for the Economy, Public Works, Planning and Housing requested the National Commission for Data Protection (CNPd) to issue an opinion on Proposed Law 64/XV/1,a (Gov), which "Authorizes the Government to approve a new legal regime for the public service of transporting passengers by taxi", which is accompanied by the Authorized Decree-Law Project.

2. The CNPD issues an opinion within the scope of its attributions and competences as an independent administrative authority with authoritative powers for the control of the processing of personal data, conferred by articles 57, paragraph 1, letter c); 58.° n.° 3, letter b); 36.°, n.° 4, all of Regulation (EU) 2016/679, of April 27, 2016 - General Regulation on Data Protection (hereinafter GDPR), in conjunction with the provisions of Articles 3; 4th No. 2; 6, n.° 1, letter a), all of Law n.° 58/2019, of August 8, which implements the GDPR in the internal legal order (hereinafter LERGPD).

## II. Analysis

3. Proposal for Law No. 64/XV/1 (Gov) - hereinafter Proposal for Law - and the Authorized Draft Decree-Law (hereinafter Draft Decree-Law) aim to establish the new legal regime of the public service passenger transport in light vehicles, known as taxi transport.

4. The future legal discipline, as shown in the Explanatory Memorandum of the Proposed Law, is centered on the modernization of the taxi transport market sector, adapting to recent technological and organizational developments.

5. As a result of its object, "This law authorizes the Government to approve a new legal regime for the public service of transporting passengers in light vehicles, commonly referred to as taxis, namely with regard to the rules for access to the activity, its exercise and organisation, the competences of the transport authorities, the tariff regime and the sanctioning regime" (Article 1 of the Draft Law).

6. In turn, the licensing of the taxi operator activity will be attributed to the Mobility and Transport Institute (hereinafter IMT, I.P.)

- cf. no. 1 of article 4 of the Draft Decree-Law.

7. If the Authorization Proposal does not raise any reservations from the perspective of the protection of personal data, since in the projected legal regime we find legal provisions with direct and indirect impact on the protection of personal data, as well as the definition of competences of the CNPD, which we will analyze separately.

Av. D. Carlos 1,134,1o 1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt

PAR/2023/17

1v.

i. Expressly regulated processing of personal data

8. The rules with a direct impact on the protection of personal data are found essentially in chapter II regarding access to the activity, namely in the presentation or consultation of elements for the purposes of the administrative procedure (article 5, paragraphs 4 and 5, of the Draft Decree-Law), in consulting the records necessary to assess the suitability of taxi agents (article 6, paragraph 2, of the Draft Decree-Law), as well as in the registration and duty of information, by IMT, I.P. (Article 8 of the Draft Decree-Law).

9. The provisions of article 5, paragraph 4, of the Draft Decree-Law list the elements that must accompany the licensing application for the purposes of accessing the transport activity by taxi, which includes information that may correspond to personal data, which will always occur when the applicant is a natural person and even when the information concerns natural persons who are members of the governing bodies of the applicant who is a legal person (name; tax identification number, address, including that of the members of the governing bodies, when candidates are legal persons or equivalent; criminal record certificate, tax situation in general).

10. In turn, paragraph 5 of article 5 of the Draft Decree-Law states that “[t]he interested parties are exempt from presenting the instructive elements provided for in the previous number when they are in possession of any national public administrative authority, and, for that purpose, must give their consent for the IMT, I. P., to proceed with the respective obtaining, under the terms of article 28,°-A of Decree-Law no. 135/99, of 22 April, in its current wording, and paragraph d) of article 5 of

Decree-Law No. 92/2010, of 26 July, in its current wording".

11. This access, with the consent of the interested party, aims to dispense with the need to present documents, simplifying access to documents held by administrative entities.

12. The provisions of article 8 of the Draft Decree-Law grant the IMT, I.P., the function of keeping an updated register of all taxi operators, including individual entrepreneurs.

13. This processing of personal data does not raise reservations from the point of view of its compliance with the legal regime for the protection of personal data.

ii. Processing of personal data whose prediction and regulation are silent

14. The norms with a significant impact on the protection of personal data are established in Chapter III regarding access to the market and its organization, with emphasis on the platform for collecting and managing information provided for in article 17 of the Draft Decree -Law and for the taxi service platform enshrined in article 22 of the Draft Decree-Law.

PAR/2023/17

two

National Data Protection Commission

15. The information collection and management platform, which will be governed by regulation, is provided for in paragraph 3, according to which "[the] regulations provided for in this article shall safeguard matters relating to confidentiality and commercial secrecy or business of taxi operators".

16. However, no provision has been established regarding the protection of the personal data of drivers who operate with taxi services, namely with regard to the GPS system that may be placed in these vehicles and the duty to provide information on the treatment of their personal data.

17. Furthermore, it is not specified with which data the referred platform is fed, in particular, if some of the data are extracted from the platforms provided for in article 22 of the Decree-Law Project, in which case it is necessary to regulate, in this legislative plan, the categories of information collected and under what terms the personal data of drivers and customers is safeguarded.

18. Lastly, we find taxi service platforms foreseen in article 22 of the Decree-Law Project, paragraph 1 of which establishes that "[t]he taxi transport services can also be made available through platforms of dedicated service or that add other mobility

and transport services, provided that the activities are duly segregated", adding paragraph 2 that "[t]he taxi service platforms, when based on electronic infrastructures, must provide estimates of final price to the consumer, in accordance with the tariff formation rules established by this decree-law and respective regulations."

19. Further, in paragraph 4 of this article 22 of the Draft Decree-Law, it is established that B[o]contracts entered into electronically must comply with the provisions of Decree-Law No. 7/2004, of January 7, in its current wording", regulating this last diploma to electronic commerce in the internal market.

20. Now, these platforms necessarily imply the processing of personal data, not only of taxi drivers, but also of customers. In fact, the functioning of the platforms seems to presuppose the provision of an electronic application to customers for the purpose of contracting services electronically. But the Project is also silent on the processing of personal data within the scope of the use of this application. And, however, personal data as relevant as name, mobile phone number, location, route, data relating to the payment of services provided, may be at stake here.

21. It is, therefore, to say the least surprising that this article does not have any explicit provision for the processing of personal data, nothing is said about who is responsible for the processing of personal data carried out in the context of these platforms, nor which personal data is legitimate to treat and how long they can be kept. Consumer protection concerns seem to boil down to requiring estimates

Av.D. Carlos 1,134,1° 1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt

PAR/2023/17

2v.

price to be charged, forgetting the fundamental dimension relating to customer privacy in the context of using these services.

22. The CNPD therefore considers it essential to regulate the processing of personal data at the legislative level, in particular by specifying who is responsible for processing personal data, the categories of data subjects (drivers and customers), data personal data that may be subject to treatment and the length of data retention.

iii. The competences of the CNPD

23. Article 34 of the Draft Decree-Law lists the supervisory bodies for compliance with the new legal regime for the public service of transporting passengers by taxi, mentioning in subparagraph g) the National Data Protection Commission.

24. The CNPD notes in this regard that this normative segment intends to leave no doubt as to such competence regarding the processing of personal data, which from the outset its legal basis in the RGPD and the LERGD, having nothing to advance in this regard.

### III. Conclusion

25. Under the terms and on the grounds set out above, the CNPD recommends that the Draft Decree-Law:

The. Establish, through regulatory provisions, the protection of personal data of drivers who operate with taxi services, regulating the processing of their personal data and imposing that they are aware of the GPS systems that may be placed in vehicles;

B. Provides for and regulates, in Article 22 of the Project, the processing of personal data within the scope of taxi service platforms, in particular, specifying who is responsible for processing personal data, the categories of data subjects (drivers and customers ), personal data that may be subject to processing and the length of data retention.

Lisbon, March 15, 2023

Filipa Calvão (President, who reported)