

NATIONAL COMMISSION

DATA PROTECTION

OPINION/2019/29

I. Order

The Secretary of State for Agriculture and Food determined the submission to the National Data Protection Commission (CNPd), for consideration, of the Draft Decree-Law that establishes the rules for the identification of companion animals of the species referred to in Annex I of the Regulation (EU) 576/2013, of the European Parliament and of the Council, of 12 June 2013, and in Annex I to Regulation (EU) 2016/429, of the European Parliament and of the Council, of 9 March 2016.

The request made and the opinion issued now derive from the attributions and powers of the CNPD, as an independent administrative entity with powers of authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and by the no. 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 no. Article 21(1) and Article 22(1), both of Law No. 67/98, of October 26, amended by Law No. 103/2015, of August 24 (Law of Personal Data Protection - LPDP).

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

II. appreciation

1. The processing of personal data: the categories of personal data

This draft decree-law defines the regime for the identification of companion animals, providing for the integration of a set of information in the Companion Animal Identification System (SIAC), of which the information relating to two types of natural persons stands out: the owner or keeper of the animal and the veterinarian. At

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insofar as they are identified in the register associated with the animal's identifying device (the transponder), processing of

personal data is involved, in accordance with paragraphs 1) and 2) of article 4 of the GDPR.

In fact, in Article 3(b) of the project, registration is defined as 'the set of information collected in the SIAC with the elements relating to the transponder number, elements of the animal's review, identification of the animal's holder, veterinary doctor who marks the animal (...)'.

In this regard, it is important to note that paragraph b) of article 3 does not specify which personal data of the owner of the animal and the veterinarian are registered, limiting itself to referring to their identification. As it is true that this draft diploma intends to serve as a basis for the lawfulness of the processing of personal data, under the terms of subparagraph c) of paragraph 1 of article 6 of the RGPD, the CNPD recalls the importance of specifying the categories of personal data, so it recommends that, in addition to identification, the category relating to contact data (where the domicile or residence of the holder will be inserted) be added - in line with the reference contained in subparagraph a) of paragraph 2 of article 13 of the project).

Attention is also drawn to the fact that such data, when relating to the veterinarian, must be limited to the professional name, professional certificate number, professional address and other professional contact details. This is an aspect that must be kept in mind when the rules relating to the SIAC are approved by the Director General of Food and Veterinary Medicine, under the terms of paragraph 4 of article 8 of the project. The collection and conservation of personal data comply with the principles of purpose and minimization of personal data, so that no other type of identification elements of the veterinarian should be collected, in addition to those that, under the terms of the law that defines the status of these professionals, serves to identify them as such - cf. Article 5(1)(b) and c) of the GDPR.

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2. The regulation of the processing of personal data Focusing now on the article that regulates the SIAC - article 8 of the project - we begin by pointing out that the last number of article 8 determines the application, to the processing of personal data contained in the SIAC, the RGPD and national legislation on the protection of personal data.

However, some of the provisions of article 8 deserve, from the CNPD's perspective, specific reference to some rules of the

GDPR, as explained further below.

First of all, in paragraph 3 of article 8, the "assignment of the management of the SIAC to other entities", insofar as it implies entrusting another entity with the processing of personal data on behalf of the controller, corresponds to subcontracting (cf. Article 4(8) of the GDPR). To that extent, the protocol referred to in Article 8(3) of the draft must provide for the different elements provided for in Article 28 of the GDPR. It is therefore recommended that this obligation be made explicit in paragraph 3 of article 8 of the project, even if it is simply a reference to that precept.

With regard to paragraph 4 of article 8, where the General Director of Food and Veterinary is empowered to approve the rules and procedures relating to the functioning of the SIAC and the management of entities with access and respective access profiles, it is important to specify that such rules and procedures, in particular those relating to access and access profiles, must comply with the principles of purpose and proportionality, which are the most important aspect of necessity, which is the basis for any processing of personal data (paragraphs b) and c) of Article 5(1) of the GDPR).

Indeed, it is essential that access permissions to the SIAC are only granted to entities that need to do so in order to fulfill the purpose of the SIAC. Taking into account the purpose of this database, accesses can only be considered justified if they are related to the identification of the pet animal (therefore, to contact or identify its holder or the veterinarian, or even to update the information),

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therefore it is essential that each access is contextualized, with identification of the reason for the access, and also that the information of who accessed it and when it accessed is registered in the system {/og of access}.

It should be noted that these are essential elements for verifying the correct use of the information system, in particular with regard to the principles of the purpose and necessity of access, and their registration is essential for inspection or auditing procedures.

Thus, the CNPD recommends that it be made explicit in paragraph 4 of article 8 that such rules and procedures, in particular those relating to access and access profiles, must comply with the principles of purpose and proportionality of data processing. personal.

Also within the scope of article 8, paragraph 6 of it provides for a duty to promote the transmission of data between information systems through the Public Administration Interoperability Platform.

However, the duty to transmit personal data between information systems via the aforementioned platform also covers personal data; and, as for these, the lawfulness of imposing a duty of this nature depends on the specification of the purposes of the transmission, so that the need for it can be assessed, in accordance with the principles already mentioned here, enshrined in paragraph 1 of article 5 of the GDPR.

However, the rule is limited to providing, as a presupposition of such a duty, that “it proves necessary for the operation of the SIAC or for the fulfillment of its purposes”, which is objectively insufficient to consider the transmission of personal data as substantiated. In fact, the purposes of the SIAC are not defined at any point in the articles of the SIAC (only its object or scope), and the simple reference to the need for its operationalization does not allow us to guess the situations in which the aforementioned may be legitimate. transmission of personal data between systems of

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information through the Public Administration Interoperability Platform, nor which information systems will be at issue here.

Thus, the imposition of data transmission and the mandatory use of this administrative simplification tool can only be considered to comply with the legal regime for the protection of personal data if it typically specifies the situations in which the transmission of data may be justified. personal data and the databases between which such transmission may occur.

Otherwise, the rule does not serve as a legitimizing basis for the processing of personal data, for the purposes of Article 6(1)(c) of the GDPR.

Finally, paragraph 7 of article 8 requires that the regulation of security procedures, access and processing of information in the SIAC provide for the mandatory use of electronic authentication mechanisms through the Citizen Card and the Digital Mobile Key.

The CNPD praises the provision of mandatory electronic authentication in accessing and in other types of interactions in the

SIAC, but stresses that citizens cannot be forced to use the Citizen Card for electronic authentication when they are accessing the SIAC in the exercise of their professional activity. , especially if, for this purpose, they have professional identification cards.

III. conclusions

On the grounds set out above, the CNPD recommends that, in this draft decree-law, so that it can serve as a basis for the legality of the processing of personal data contained in the Pet Identification System, the following aspects of the treatments:

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- i. In paragraph b) of article 3, in addition to the identification of the holder of the animal and the veterinarian, the category relating to contact data is added, remembering that, in terms of regulation, the data relating to the veterinarian must be summarized the professional name, professional license number, professional address and other professional contact details;
- ii. In paragraph 3 of article 8, express reference is made to the obligation to observe the regime for subcontracting the processing of personal data;
- iii. In Article 8(4), it is expressly mentioned that the rules and procedures, in particular those relating to access and access profiles, must comply with the principles of purpose and proportionality in the processing of personal data, in order to ensure that access regulations comply with data protection principles and rules;
- iv. In paragraph 6 of article 8, the imposition of data transmission between information systems using the Public Administration Interoperability Platform, as a legitimizing basis for this processing of personal data, can only be considered in accordance with the RGPD if the situations in which the transmission of personal data may be justified are typically detailed, as well as the databases between which such transmission may occur.

LisbonJJune 3, 2019

Filipa Calvão (President, who reported)