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National Data Protection Commission

OPINION/2023/33

I. Order

1. The Municipality of Palmeia asked the National Commission for Data Protection (CNPD) to issue an opinion on the Municipal Housing Regulation Project for the Municipality of Palmeia.

2. The request is accompanied by information that the same was the subject of an opinion by the Data Protection Officer of the Municipality of Palmeia, following which changes were made to the initial project.

3. 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 subparagraph c) of paragraph 1 of article 57, subparagraph b) Article 58(3) and Article 36(4) of Regulation (EU) 2016/679, of 27 April 2016 - General Regulation on Data Protection (hereinafter, GDPR), in in conjunction with the provisions of article 3, paragraph 2 of article 4 and paragraph a) of paragraph 1 of article 6 of Law no. 58/2019, of August 8, which implements in internal legal order the GDPR.

II. Analysis

4. The Municipal Housing Regulation Project of the Municipality of Palmeia (hereinafter, Project) establishes, within the scope of its legal attributions and pursuant to paragraph 4 of article 2 of Law no. 81/2014, of 19 of December, amended by Law No. 32/2016, of August 24, "the regime for the assignment, social and asset management of the housing stock in the Municipality of Palmeia, intended for supported leasing", setting out the criteria for the allocation of municipal housing under supported leasing and the rules governing the occupation and use of municipal housing intended for supported leasing (cf. Article 2 of the Project).

5. In this regard, in view of the CNPD's attributions, only the regulatory provisions that provide for or imply the processing of personal data and, especially, with an impact on the fundamental rights to informative self-determination and the privacy of

private life are considered.

6. It begins by highlighting that paragraph 3 of article 8 of the Project determines that «[the] attribution of a house under supported leasing gives the Municipality of Palmeia, under the applicable legal terms, the right to access the data of the lessee and the members of the respective household, for the purpose of informing or confirming the declared data, under the terms regulated in article 31 of Law no. 81/2014, of 19 December in its wording in force, without prejudice to the provisions of article 73 of this regulation, relating to the processing of personal data.

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7. This precept reproduces, in essence, the permission to access the personal data of the tenant and the members of the respective household, provided for in paragraph 2 of article 5 of Law no. 81/2014, of 19 December , and refers to the access regime regulated in paragraph 1 of article 31 of the same law, which establishes that «[the] landlord of a rented or subletted dwelling under supported leasing may, for the purposes of confirming the data of the tenant or tenants of the dwelling and the members of the respective household, request the AT and the Instituto dos Registos e do Notariado, I.P. (IRN, I.P.), information on the composition and income of the household and the ownership of movable property or properties, through the Public Administration interoperability platform or by sending a file, with reference to the tax identification numbers of the tenants of the housing and the members of the respective household [...]».

8. Thus, the regulatory norm that provides for the power to access the personal data of the tenant and the members of the household, finds direct support in a legal provision, not raising, to that extent, reservations.

9. In paragraph a) of paragraph 2 of article 15 of the Project, it is required that the application be accompanied by the civil and fiscal identification documents of all the elements of the household, but, immediately afterwards, it is stated that the

reproduction of the civil identification document is not mandatory, admitting, alternatively, and if justified, that the identification of the holders is the subject of verification by the services of the Municipality through the presence of the respective documents. Despite the apparently incongruous wording, at least if the registration is submitted electronically - the registration form must be accompanied... and the reproduction attachment [...] is not mandatory - the caveat, in fine, in To the extent that it ensures an alternative, it guarantees compliance with that requirement with Law No. 7/2007, of February 5th, last amended by Law No. 61/2021, of August 19th (Citizen Card Law) , by maintaining the submission of a copy of the card subject to the will of the holder of the civil identification card.

10. This conclusion is based on the interpretation that the alternative solution lies, in fact, in the availability of the cardholder and, therefore, on the assumption that the specification "and if justified" means that, when submitting the application, the Municipality may not deem it necessary to verify the identity of the candidates in person (reserving it for a later time). Otherwise - i.e., if this specification was intended to make the guarantee of this alternative depend on the exposure by the holder of a special justification -, this provision would no longer respect the space that the Citizen Card Law wanted to leave to the will of the holder in the control of your personal data. For this reason and to clarify the meaning of the rule, the CNPD recommends the reformulation of its wording.

11. It is also important to consider paragraph 4 of article 34 of the Project, which presents an illustrative list of evidence of permanent and effective non-residency in the assigned dwelling. In this list, evidence such as «[when the mailbox is systematically and visibly full, namely with different advertising and with a notorious lack of use by the respective household». It should be recalled, in this regard, that Law No. 81/2014, in Article 26(2), established the conditions whose cumulative verification, within a minimum period of six months, allows considering the non-use of the dwelling, namely: a) At least three attempts have been made, with a minimum interval of two weeks between each one of them, to deliver a communication in the person of the tenant or member of the household, as the case may be, by a representative of the duly identified landlord and delivery has been impossible due to their absence; b) A notice has been posted on the entrance door of the dwelling, for a

minimum period of 30 days, with identical content to that of the communication; c) The records of the supply of essential water and electricity services show the absence of supply or consumption contracts in relation to the leased, under the terms of Article 33(2).

12. Since Law No. 81/2014 established the exhaustive and cumulative circumstances that allow presuming the non-use of the housing, it appears that the regulatory power granted by the same law to the local administration does not include the power to ignore the verification requirement of those conditions and replacing it with other circumstances, in manifest disrespect for the principle of legality.

13. Furthermore, the new circumstances considered here as indicative of that situation imply different processing of personal data, some of which do not even seem to be suitable for the intended purpose (e.g., when the mailbox is systematically and visibly full, namely with different advertising and with a notable lack of use by the respective household, given that, nowadays, most communications are carried out by email or on digital platforms, and there are those who, for that reason, disregard postal mail).

14. To that extent, the CNPD recommends reconsidering the wording of paragraph 2 of article 34 of the Project, so that it conforms to the provisions of article nº 2 of article 26 of Law no. 81/2014 , under penalty of contradiction with the law and also because some of the circumstances foreseen in that precept imply processing of personal data not able to achieve the intended purpose of delimiting serious indications of non-use of the housing and, to that extent, imply processing of personal data that it is not appropriate and necessary to safeguard the public interest envisaged here, in violation of the principle of proportionality to which processing under paragraphs c) and e) of paragraph 1 of article 6 of the RGPD are subject.

15. Finally, it is important to consider Article 73 of the Project, a provision which seeks to ensure compliance with the legal regime for the protection of personal data, and which highlights the content of the information to be

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provide tenants and other household members, in accordance with Articles 13 and 14 of the RGPD.

16. However, article 73 contains some provisions, which due to their vague and generic nature, are insufficient to fulfill the intended function of regulating the processing of personal data provided for in the Project. This is especially what happens, in paragraph 1 of article 73 of the Project, with the enunciation of the principles of protection of personal data that it is declared to intend to comply with. Given that the processing of personal data carried out by the Municipality is already linked to such principles, under the terms of article 5 of the RGPD, its enunciation must be accompanied by a more detailed description of the aspects of the treatment, as indicated in n. Article 6(3) of the GDPR. 0 which is all the more important as the Project envisages the processing of sensitive personal data, subject to a particularly reinforced regime of protection, such as data relating to the health of tenants and/or members of their household.

17. Thus, it is important to define more precisely the periods for the conservation of personal data, for which purpose what is provided for in paragraph 1 of article 73 is not sufficient, nor what is added in paragraph ej of paragraph. 2 of the same article.

18. At the same time, the information on the processing of personal data that the Municipality undertakes to provide to data subjects, in paragraph 2 of this article, must be revised in terms capable of complying with the provisions of articles 13 and 14. ° GDPR; specifying, in paragraph ej, in addition to the data retention periods, for what purpose and to what categories of entities are or may be the personal data communicated.

III. Conclusion

19. Based on the reasons set out above, the CNPD recommends:

The. the revision of the provisions of paragraph 2 of article 34 of the Project, so that it conforms to the provisions of article 2 of article 26 of Law no. 81/2014 and respects the principle of proportionality, which if it has to guide the processing of personal data, in the terms explained above, in points 11 to 14;

B. the reformulation of article 73 of the Project, in particular paragraph e) of paragraph 2, under the terms set out above, in points 17 and 18;

w. the clarification of item aj of paragraph 2 of article 15 of the Project, under the terms indicated above, in points 9 and 10.

Lisbon, March 29, 2023

Filipa Calvão (President, who reported)