

NATIONAL DATA PROTECTION COMMISSION

OPINION/2019/87

I. Order

The Ministry of Foreign Affairs, through the Directorate-General for European Affairs, requested the National Data Protection Commission (CNPd) to pronounce on the Protocol that regulates procedures at national level, within the scope of the application of Regulation (EU) 2019/ 788 of the European Parliament and of the Council of 17 April 2019 on the European Citizens' Initiative (hereinafter 'the ECI Regulation').

The CNPD issues an opinion within the scope of its attributions and powers as an independent administrative authority with powers of authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and paragraph 4 of the article 36 of Regulation (EU) 2016/679, of 27 April 2016 - General Data Protection Regulation (GDPR), in conjunction with the provisions of article 3, paragraph 2 of article 4 .°, and in paragraph a) of paragraph 1 of article 6, all of Law n.° 58/2019, of 8 August.

This is a Collaboration Protocol (hereinafter “the Protocol”) between several national entities that have, in some way, an intervention in the process of support and assistance to European citizenship initiatives subscribed by citizens of Portuguese nationality.

Thus, the General Directorate for European Affairs (DGAE), the Institute of Registries and Notaries, I.P (IRN), the Foreigners and Borders Service (SEF), the National Security Office (GNS), the Institute of Financial Management and Justice Equipment, I.P. (IGFEJ), the Government Informatics Network Management Center (CEGER), the Agency for Administrative Modernization (AMA) and the Jacques Delors European Information Center (CIEJD).

The purpose of the Protocol is to define specific rules for the application of the ICE Regulation, including the certification of systems for collecting statements of support electronically, which are hosted in Portugal, as well as the procedures for verifying the identity of subscribers. Portuguese citizens of declarations of support for a European citizens' initiative (cf. Clause 1, a).

AV. D. CARLOS I, 134 - 1o | 1200-651 LISBON | WWW.CNPd.PT | TEU+351 213 928 400 | FAX: +351 213 976 832

Process PAR/2019/74 1v.

This Protocol replaces a previous protocol, which operated during the validity of the previous European regulation on the

European citizens' initiative - Regulation (EU) 211/2011, of 16 February, now updated in line with the new ICE Regulation, which aims to make the European citizens' initiative more accessible, including to people with disabilities, and easier for organizers and supporters to use.

Within the scope of the foreseen procedures, the need for the group of organizers of a European Citizens' Initiative to certify, at national level, the systems they intend to use for online collection of statements of support, whenever they do not use the central system provided by the European Commission, with the GNS, which is the competent authority designated for the purposes of complying with Article 11(3) of the ECI Regulation (cf. Clause 2 a).

There is also the possibility of hosting and operating the online collection systems at CEGER, under conditions to be regulated by a "legal act" between CEGER and the organizers of the European Citizens' Initiative (cf. Clause 3.a).

With regard to the validation component of statements of support signed by nationals, provided for in article 12 of the ICE Regulation, the IRN is the competent authority designated for this purpose. Portugal notified the European Commission that it would proceed with the verification and certification of the statements of support, based on the name and identification document number, with the identity card, citizen card and passport being recognised.

Statements of support are sent by the organizers to the IRN, in paper or electronic format, for verification based on the citizen's card or identity card. The paper ones will be verified directly by the IRN by sampling; those in electronic format are fully verified through the IGFEJ.

When the personal identification document indicated in the declaration of support is the passport, the IRN forwards to the SEF, responsible for the processing of personal data of the Portuguese Electronic Passport Information System (SIPEP), the declarations received in paper so that it can verify . As for declarations in electronic format, it is foreseen that they will be verified, based on a protocol to be established between the IRN, the IGFEJ and the SEF, through "a link via webservice (point to point) between the

Process PAR/2019/74 2

/ 'NATIONAL COMMISSION

data protection JL

electronic systems of civil identification' of the IRN and the SIPEP (cf. subparagraph c) of paragraph 3 of Clause 4.a of the Protocol).

Clause 6.a of the Protocol provides that “in the event of false declarations or fraudulent use of data, the penalties provided for by law shall apply”.

A clause on the protection of personal data should also be highlighted, referring to compliance with the obligations arising from the RGPD and Law no. » (cf. Clause 7.a).

II. appreciation

The ICE Regulation and Commission Implementing Regulation (EU) 2019/1799, of 22 October 2019, which establish the technical specifications to which online collection systems must comply, pursuant to Regulation (EU) 2019/788 of the European Parliament and of the Council on the European Citizens' Initiative, determine in great detail the rules applicable to the operation of the initiatives, in particular with regard to information security requirements, as well as define, from the point of view of protection of personal data, who are responsible for the processing of data, the responsibilities, at the various levels, which personal data are processed, how the right to information should be provided to data subjects, what are the retention periods for personal data and for the organizers , either for the competent authority for verifying the statements of support, or also for the requirement of risk assessment and the adoption of adequate measures to mitigate that risk. For everything else, it naturally refers to the GDPR.

To that extent, the Protocol does not need additional regulation on this matter, as it stems from data protection legislation and, in this particular context, also from the specific rules that the ECI Regulation imposes, in a uniform and direct way, on all Member States. .

Av. D. CARLOS I, 134 - 1o | 1200-651 LISBON | WWW.CNPD.PT | TEL: +351 213 928 400 | FAX: +351 213 976 832

Process PAR/2019/74 2v.

Consequently, the Protocol does not raise any special observations to the CNPD in this area. However, for the sake of clarity, it is suggested that Clause 7.a, which refers to “[all] those involved in a European Citizens' Initiative who process personal data are subject to compliance with the obligations arising from ...», is amended to provide that “all signatories of this Protocol who proceed with the processing, as the protocol is not intended for nor binding, in this scope, to the generality of the intervening parties, in particular the organizers.

Likewise, the content of Clause 6.a, which is clearly addressed to the organizers, as provided for in Article 5(6) of the ICE Regulation, is not understood. Under this rule of the ECI Regulation, “Member States shall ensure that members of groups of

organizers are, under national law, subject to effective, proportionate and dissuasive sanctions whenever they violate the provisions of this Regulation and, in particular: a) If they make false statements; b) If they use the data fraudulently.» And this without prejudice to the GDPR sanctions for data protection infringements.

However, it is not known whether the Portuguese State has implemented this norm of Union law in national law, with a view to sanctioning violations of the ICE Regulation. If specific sanctions relating to this regulation are provided for in national law, then it makes no sense to include such a clause in this Protocol, even if it is insufficient, as it is not just a matter of making false statements or fraudulent use of data, and because the recipients are the organizers and not the signatories of the Protocol. If no specific legal provisions have been created, a fortiori the clause should be deleted.

This Protocol cannot claim to comply, at least in its entirety, with the requirement set out in Article 21(1) of the ECI Regulation, as it is not a suitable means to that end.

Finally, with regard to subparagraph c) of paragraph 3 of Clause 4.a of the Protocol, concerning the protocol to be concluded between the IRN and the SEF and the IGFEJ, an interaction between “the electronic systems of civil identification” is described. of the IRN and the SIPEP, which is not perceptible. Indeed, as described in this clause, access to SIPEP to verify the identity of the person subscribing to an initiative, when this support is collected in electronic format,

Process PAR/2019/74 | 3

:JBnÊ

:■ NATIONAL COMMISSION ON DATA PROTECTION

seems not to be done by the SEF, responsible for data processing, but by the IRN, through the IGFEJ. But only the text of the protocol to be established can fully clarify the extent of this interaction, pending an assessment by the CNPD as to the lawfulness of such access, if any. In any case, the connection between the IRN and the SEF, through a webservice, to validate the identification of a declaration of support based on a passport cannot be based at all on any relationship with the civil identification database. It is suggested that the text of this clause be confirmed, as it may be an oversight; otherwise, there is no legitimacy for this interconnection within the framework of the European Citizens' Initiative.

III. Conclusion

The CNPD considers that the Protocol does not raise concerns from the point of view of protection of personal data, although in general its purpose and scope is not very clear.

Specific data protection issues are already duly addressed in Regulation (EU) 2019/788, which is directly applicable in the national legal system, and, alternatively, in Regulation (EU) 2016/679.

The text of Clause 4.a should be revised, taking into account the observations above, also warning that the protocol to be signed between the IRN and the SEF, regarding the verification of statements of support in which the Portuguese passport is indicated as a document of personal identification, must be submitted to the CNPD for prior consultation, under the terms of article 36, paragraph 4, of the RGPD.

Lisbon, December 20, 2019

AV. D. CARLOS I, 134 - r | 1200-651 LISBON | WWW.CNPD.PT | TEU+351 213 928 400 | FAX: +351 213 976 832