

I. Request

1. On February 17, 2023, the Secretary of State for the Presidency of the Council of Ministers requested the National Data Protection Commission (CNPD) to issue an opinion on the draft Decree-Law 343/XXIII/2022, which “proceeds to the alteration of the legal regime of access and exercise of commerce, services and catering activities”.

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

II. Analysis

i) The legal design of the project and its sustainability

3. This Project corresponds to the fourth amendment to Decree-Law No. 10/2015, of January 16, which approved the legal regime for access to and exercise of commerce, services and catering activities (hereinafter RJAEACSR).

4. The Project defines its purpose (Article 1), specifies the amended rules (Article 2), adds Annex II to the initial diploma (Article 3) and establishes the moment of its effectiveness (Article 4th).

5. The normative amendment is addressed to articles 148, 151 and 152, which are part of Title IV, called “Registration”, integrating its Chapter I, which corresponds to its only chapter, identified as " Commercial Registry" (Article 2 of the Project).

6. This Chapter I includes the following articles, which are duly epigraphed, as described below: 148.º - Database of sectoral records of commerce, services and catering; 149 - Purposes of commercial registration; 150. Entity responsible for processing the database; 151. - Data collected; 152. - Methods of collection; 153.º - Communication and access to data; 154. Right of

access and information; 155 - Information security; 156th - Secrecy; 157. - Personal data protection law.

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7. The aforementioned "Cadastro Comercial" database is managed by the Directorate-General for Economic Activities (DGAE) (article 148 of the RJAECRS), its director-general being responsible for processing the aforementioned database (article 150 .º of the RJAECRS).

8. In its explanatory memorandum it states that "This database includes information on the establishments and activities of commerce, services and catering or beverages, being fed by data from various sources, namely, information held by other bodies of the Administration Public, through the interconnection of the respective databases."

9. It was further stated that "The information held by the Tributary and Customs Authority (AT) and the Institute of Registries and Notaries, I.P., derived, respectively, from tax declarations and Simplified Business Information (IES), is essential for the creation and permanent updating of the Commercial Register. In this context, it is foreseen that access to the data contained in the AT database will be regulated through a protocol to be signed between the AT, the Agency for Administrative Modernization, I.P., and the DGAE."

10. Finally, and anticipating the creation of a "Map of Commerce, Services and Restaurants", it was mentioned that "For the implementation of this measure, it is essential to create and constantly update the Commercial Register, which will centralize all the information necessary for the implementation of the aforementioned map , making it necessary to identify the economic activities covered by the communication of data, and to provide, in addition to the consultation permission, the communication of information to the DGAE by the Public Administration bodies, holders of the information".

11. As can be seen, this Project is a "legislative vehicle" for a further legislative amendment that has not yet been normatively specified and densified.

ii) The impact of the Project on the protection of personal data

12. The impact of the Project on the protection of personal data cannot be read in isolation, limited only to the projected legislative change, isolating it from the current legal design contained in the RJAECRSR.

13. The CNPD notes, in this regard, a legislative concern for compliance with the legal data protection regime.

14. However, this concern is directed towards legislation that is no longer in force in the national legal system - because it has been revoked - and which is exemplarily referenced in the provisions of article 157 of the RJAECRSR, whose current wording is as follows: " The provisions of this chapter do not affect the application of the regime provided for in Law No. 67/98, of October 26, on the protection of personal data".

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15. The reference to Law No. 67/98, of October 26, is also included in Article 150(1), Articles 154, 155 and Article 156(2) , all from RJAECRSR.

16. Thus, the CNPD recommends that this legislative amendment include the due updating of the legislation on the protection of personal data, taking the RGPD and the LERGD as a reference, or simply referring to the legal regime for the protection of personal data.

17. The present Project, although it focuses on article 151 of the RJAECRSR regarding the data collected, does not establish any period of conservation - and the corresponding duty to eliminate them when they are no longer necessary, which conflicts with the previously mentioned principle of privacy. limitation of data retention (Article 5(1)(e) GDPR).

18. The Project amends the provisions of article 152 of the RJAECRSR regarding the method of data collection and their inclusion in the so-called "commercial register".

19. However, it remains silent as to the definition of appropriate measures to guarantee the control of access to these databases, nor does it define the obligation of electronic records of accesses and the period of their conservation.

20. The CNPD considers insufficient, for this purpose, the mere reference to a "protocol to be signed between the IRN, IP the Agency for Administrative Modernization, and the DGAE, under the terms of the applicable legislation" (article 152, paragraph 2, of the RJAECRSR), as it is not accompanied by a minimum of guidance regarding the regulation of the terms of

data communication .

21. The list of activities added by the proposed Annex II, corresponds to the purposes of the mentioned “commercial register.

III. CONCLUSIONS

22. Under the terms and on the grounds set out above, the CNPD issues this opinion, in which it recommends:

- a) this legislative amendment must include the due updating of the legislation on the protection of personal data, taking the RGPD and the LERGD as a reference;
- b) the establishment of a data retention period, with the imposition of their elimination when they become unnecessary;
- c) tightening up the system for controlling access to the aforementioned databases, establishing a conservation period for the respective electronic records.

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