

I. Order

1. The Secretary of State for the Presidency of the Council of Ministers asked the National Data Protection Commission (CNPD) to issue an opinion on the Draft Decree-Law no. of fixed and mobile electronic communications networks - METD'.
2. The CNPD issues an opinion within the scope of its powers and competences, 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, subparagraph b) of Article 58(3) and Article 36(4), all of Regulation (EU) 2016/679, of 27 April 2016 - General Data Protection Regulation (hereinafter GDPR), 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 8 August, which implements the GDPR in the domestic legal order.
3. This Draft Decree-Law establishes the general rules applicable to the implementation of an information platform regarding the coverage of fixed and mobile electronic communications networks of companies that offer public electronic communications networks, which does not imply the provision of data personal.
4. However, with regard to access to the aforementioned platform, by those companies (operators), for uploading the information, paragraph 5 of article 3 of the Project establishes that it is carried out "by means of electronic authentication through the Card of Citizenship or Digital Mobile Key, with the possibility of resorting to the Professional Attributes Certification System».
5. However, the CNPD has drawn attention to the contradiction between a operative content of this type and the provisions of Law No. 7/2007, of 5 February, last amended by Law No. August 19th.
6. Indeed, it is clear from Law no. 7/2007 that the citizen's card, as a means of civil identification by nature and principle, can only be used for the electronic identification and authentication of the respective holder in the professional context (as well as for purposes of attesting professional attributes) in full conditions of freedom for the formation of their will - cf. Article 2, Article 18(5) and Article 18-A(1) of Law No. 7/2007.

7. It is recalled that the citizen's card is an authentic document that contains the data of each citizen relevant to the identification of natural persons, in accordance with article 2 of Law no. of the same for the purpose of electronic authentication of its holder, such as the use of the mobile key

read Analysis

Av.D. Carlos 1,134.1° 1200-651 Lisbon

T (+351) 213 928 400 F (+351) 213 976 832

geral@cnpcl.pt

www.cnpd.pt

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digital, underlies the processing of personal data, under the terms of paragraphs 1) and 2) of article 4.

8. From the CNPD's perspective, it follows from article 2 of Law no. 7/2007 that any citizen, including workers, has the right to use the citizen's card only to certify their personal identity and for their identification as a member of the national community, as this, by nature and principle, is the role of the citizen's card. This interpretation is reinforced by Articles 18 and 18-A of the same diploma, where the use of electronic certification features is provided as an option for the cardholder ('when he intends to use it' - see no. Article 18) and the possibility of associating professional attributes to the electronic signature ('at the request of the holder' - see Article 18a(5)). This, despite the CNPD's successive calls for attention to the difficulties that the asymmetry of labor relations creates in the expression of a free consent of the worker regarding the use of the citizen's card for professional purposes.

9. However, the provisions of paragraph 5 of article 3 of the Project innovates by imposing that access to the platform by operators is made via the citizen card or Digital Mobile Key.

10. In fact, the Draft Decree-Law is requiring operators to oblige their workers to use the citizen's card for the electronic authentication of the respective employer (the operating company), when, in fact, the use of the card and the Digital Mobile Key must only be used for authentication of the cardholder, given that this use, in the work context, must result from the free choice of the cardholder - which only occurs if an alternative is foreseen and with guarantees of non-discrimination against workers in the event of refusal to use them.

11. The inconsistency of the solution provided for in paragraph 5 of article 3 of the Project and its contradiction with articles 2

and paragraph 5 of article 18 of Law No. 7/2007 are, therefore, , evident, with the CNPD understanding that it must be revised, at least through the provision of an alternative solution.

III. Conclusion

12. On these grounds, the CNPD recommends reviewing paragraph 5 of article 3 of the Draft Decree-Law in the terms set out above.

Approved at the meeting of October 6, 2021

of the GDPR.

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