

National Data Protection Commission

OPINION/2023/39

I. Order

1. The Permanent Specialized Committee on General Policy of the Legislative Assembly of the Autonomous Region of the Azores requested the National Data Protection Commission (CNPD) to issue an opinion, by the 27th of the same month, on the Draft Regional Legislative Decree n. ° 87/XII (BE) which aims at the "Creation of the Nominations Portal on the Azores Government Website".

2. 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 articles 57, paragraph 1, letter c); 58, paragraph 3, subparagraph b); 36, no. 4, all of Regulation (EU) 2016/679, of April 27, 2016 - General Regulation on Data Protection (hereinafter RGPD), in conjunction with the provisions of articles 3; 4th, No. 2; 6, n.° 1, letter a), all of Law n.° 58/2019, of August 8, which implements the GDPR in the internal legal order (hereinafter LERGD).

II. Analysis

3. The Constitution of the Republic establishes, under the terms of paragraph 6 of its article 231, that "It is the exclusive competence of the Regional Government in matters relating to its own organization and functioning", and for that reason, the organic of the Regional Governments and the offices of their members to appear in regional regulatory decrees.

4. In this sequence, Regional Regulatory Decree No. 18/99/A, of December 21st, established the composition, organization and regime of the offices of the President of the Regional Government of the Azores, the regional secretaries and the regional undersecretaries.

5. This Draft Regional Legislative Decree n.° 87/XII (BE) (hereinafter Draft), by creating the "Nominations Portal" within the scope of the Regional Government of the Azores, established a mechanism for transparency and publicity of appointments to who joins these offices.

6. The design of the Project foresees (8) articles, concerning its object (article 1), scope (article 2), functioning of the Portal das Appointments (article 3), management of the Portal das Appointments (article 4), information to be advertised on the

Nominations Portal (article 5), access to information on the Nominations Portal (article 6), transitional rule (article 7) and entry into force (article 8).).

7. Article 1 states that "The present diploma creates the Portal das Appointments and establishes the rules applicable to the mandatory public disclosure, on the Regional Government's website,

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(<https://portal.azores.gov.pt>), the composition of the offices of the members of the Regional Government and the respective remuneration of the appointed personnel".

8. In article 2 it is stipulated that "the present diploma applies to the appointment of heads of cabinet, advisors, deputies, personal secretaries and specialized collaborators of the members of the Regional Government".

9. Further on in article 5, paragraph 1, it is specified that "The Regional Government is obliged to send, in the act of appointment, for publication in the Portal das Appointments tab, the hyperlink to the appointment dispatch published in Jornal Officer of each of the members of the cabinets referred to in article 2 of this diploma".

10. The object of this project coincides, as admittedly in its preamble and is duly registered in the Technical Note prepared on the purpose of the national legal framework on the subject in question, with article 18 of Decree-Law no. 11/2012, of January 20, which stipulates that "The Government publishes on its website information on all staff working in the offices, indicating the publication and content of the respective designation orders".

11. In compliance with the latter regulation, the site <https://www.portuaal.aov.pt/pt/ac23/aoverno/nomeacoes> was created at national level, where the entity that made the nomination, the function for which he was appointed, is listed, the respective name, gross and net income earned, date of appointment and official publication, with a link to the respective order.

12. The disclosure of the identity, through the electronic site, of who and when was appointed to integrate the offices of the members of the Government of the Autonomous Region becomes a legal basis, obtaining consonance with the public interest of transparency and publicity of these appointments (cfr. Article 6(1)(e) and 6(3)(b) of the GDPR).

13. However, the final body of paragraph 3 of article 6 of the RGPD states that "This legal basis may provide for specific

provisions to adapt the application of the rules of this regulation, namely: the general conditions for the lawfulness of the processing by the controller; the types of data subject to processing; the data subjects in question; the entities to which personal data may be communicated and for what purposes; the limits to which the purposes of the treatment must comply; the deadlines for storage; and processing operations and procedures, including measures to ensure the lawfulness and fairness of processing, such as measures relating to other specific situations of processing in accordance with Chapter IX. Union or Member State law shall respond to an objective in the public interest and be proportionate to the legitimate objective pursued”.

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14. Accordingly, and in addition to the hyperlink to the appointment order, which is already included in the Project (Article 5(1)), it is recommended that it be more precise regarding the personal data to be disclosed through the Portal of Appointments, considering it pertinent that they correspond to the categories of personal data listed above, in point 11, as they are strictly necessary to ensure the purpose of public transparency.

15. It is further suggested that the regulation of the Portal das Appointments contemplated in article 4 of the Project be complemented with the duties of accuracy and updating of the respective personal data, as well as the duty of adopting security measures that guarantee the integrity and availability of personal data (cf. paragraphs d) and f) of paragraph 1 of article 5 of the RGPD).

16. Lastly, it should be noted that the limitation on data retention provided for in Article 5(3) of the Project is in line with Article 5(1)(e) of the RGPD.

III. Conclusion

Under the terms and on the grounds set out above, the CNPD recommends that:

The. the Project, in addition to the link to the appointment order; specify the personal data to be disclosed through the Portal das Appointments, corresponding to those listed above in point 11;

B. in the regulation of the Portal das Appointments, the duties of accuracy and updating of the respective personal data and the adoption of security measures that guarantee the integrity and availability of personal data are additionally explained.

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