

NATIONAL DATA PROTECTION COMMISSION

OPINION/2020/130

I - Order

The Secretary of State for the Presidency of the Council of Ministers submitted to the National Data Protection Commission (hereinafter CNPD), for an opinion, the Draft Decree-Law amending the Highway Code and complementary legislation, transposing Directive (EU) 2020/ 612.

The CNPD issues an opinion within the scope of its attributions and powers as an independent administrative authority with authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57, in conjunction with subparagraph b) of nr. 3 of article 58, and with paragraph 4 of article 36, all of Regulation (EU) 2016/679, of 27 April 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 August, which implements the GDPR in the domestic legal order.

The assessment of the CNPD is limited to the assessment of the rules that provide for or regulate the processing of personal data.

II - Appreciation

This Draft Decree-Law amends several legal diplomas. Only the diplomas that integrate relevant changes from the perspective of the protection of personal data will be considered here, which in most cases aim at simplifying administrative procedures and the interaction between citizens and Public Administration.

1. Amendments to the Highway Code

In the amendments to the Highway Code, the innovation contained in Article 85(4) is first noted. There, it is foreseen that the duty of the citizen driving the vehicle to be in possession of a wide range of documents can be fulfilled by other means: either the digital driving license, or the mobile application that allows the verification of the data contained in these documents - the key digital mobile phone - if the inspection agents have the electronic means for this purpose at the inspection site. In paragraph 5 of the same article, the hypothesis that agents do not have these means is regulated, imposing on the driver the

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duty to present the physical documents to the authority indicated by the inspection agent within five days.

Article 89(1) also provides for the possibility for the driver involved in an accident to show the documents proving the data that he has to provide to the other parties using the digital mobile key - which obviously presupposes the availability of electronic means for this purpose.

The availability of alternative ways of fulfilling the aforementioned duties does not raise objections, although it should be noted that the solutions indicated here were the subject of regulation by diplomas that deserved a reserved assessment by the CNPD<sup>1</sup>.

The innovation introduced in article 169-A, in the terms in which it is written, deserves the following note: given the provision that, in the context of the administrative offense process, procedural acts can be performed in computerized form with digital signature qualified, namely through the Citizens Card and the Digital Mobile Key, using the Professional Attributes Certification System, the CNPD recalls and insists that the use of the citizen's card for the purpose of certifying a certain professional attribute depends exclusively on the will of the cardholder. And he insists on this point, because it has been reported to the CNPD that there are entities, including public entities, that bind or condition their workers to use the card for this purpose. It is also recalled, in this regard, what was stated in Opinion No. 20/2016: "doubts arise as to the imputation to the citizen card of this ability to certify a certain professional quality. In fact, the function of the citizen's card is to identify the citizen, as is clear from Article 2 and Article 4 of Law No 7/2007. More specifically, the citizen card is intended for civil identification and identification of its holder before the Tax Administration and the Social Security and Health services. Additionally, it also has the potential to serve as proof of the holder's identity to third parties and to authenticate his status as the author of certain documents in his private life (cf. Article 6(2)). In all these situations, it is at stake to prove that one is who one claims to be, i.e., the identity of an individual is still at stake, as a citizen of a country, as a member of a national community. Not so when one intends to integrate a professional quality into the citizen's card. That

<sup>1</sup> Cf. Opinion 20/2016, of June 15, available at [https://www.cnpd.pt/home/decisooes/Par/40 20 2016.pdf](https://www.cnpd.pt/home/decisooes/Par/40%202016.pdf)

it is not the “natural” function of a civil identification card and the possibility of fitting any and all functions into it seems to distort this means of identifying citizens»<sup>2</sup>.

In article 176, electronic notification to the single digital address, through the public service of electronic notifications, is accepted as a form of notification, in the context of administrative offences. It should be noted that this form of notification implies the voluntary adherence of natural persons to the option of having a single digital address for the purpose of notifications.

Finally, regarding the annexes to the Highway Code, it is worth mentioning the change in the driving license model, with the introduction of a two-dimensional code (QR Code type) that allows the reading of data electronically.

Now consider the addition to the Highway Code of article 149-A, concerning interoperability between public bodies. This article provides that the restrictions applicable to the holder of the driving license are communicated by the supervisory entities, by the ANSR and by the courts to the IMT,IP, imposing for this purpose the use of the Public Administration Interoperability Platform.

Although it is understood that the objective of efficiency and effectiveness of the public activity justifies the processing of personal data of citizens (nationals and foreigners), also with benefit for them, the CNPD does not fail to point out the risk associated with the centralization of communications with citizens' personal information, insisting on the need for constant monitoring of security measures for that information and for updating them in line with technological developments.

## 2. Amendment to Decree-Law No. 317/94, of December 24

In the regime relating to individual driver registration, article 7 is amended, providing for access to the data contained in the registration by the IMT, IP, for specified purposes. As for the access of the Public Security Police and the Republican National Guard, since there has been no change in the grounds for this data processing, an innovation is being made by eliminating the reference to the indirect nature of access; there being nothing to oppose direct and online access to such data, taking into account the intended purposes and that access is strictly

<sup>2</sup> Available at <https://www.cnpd.pt/bin/decisooes/Par/4Q 20 2016.pdf>

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exercising legal powers, the CNPD considers that the amendments comply with the provisions of paragraphs b) and c) of article 5 of the RGPD.

A note also to the introduction in article 11, concerning the right of access by the data subject, the possibility of electronically consulting the records of offenses and scores associated with the driving title, as well as the reproduction of the record, if be able to do so through the citizen's card, the digital mobile key and the Public Administration Interoperability Platform.

### 3. Amendment to Decree-Law n.0262/2009, of September 28

Article 4(2) of Decree-Law No. 262/2009 provides for the date of death to be added to the National Register of Drivers, information that appears to be adequate and necessary to prevent misappropriation of identity of a person who died in the event of unlawful acts, in accordance with Article 5(1)(c) of the GDPR.

### 4. Amendment to Decree-Law No. 138/2012, of July 5

With regard to Decree-Law no. issuance and electronic transmission of the psychological assessment certificate. Article 14-A of this diploma already provided for the issuance and electronic transmission of the medical certificate for the purpose of issuing and revalidating the driving license, but the same regime is intended to be extended to the psychological assessment certificate.

To the extent that the rule in question regulates little else, and that article 26 of the Regulation on Legal Eligibility to Drive refers to the regulatory standards of SPMS - Serviços Partilhados do Ministério da Saúde, E.P.E., the definition of requirements and specifications of the systems for issuing medical certificates and psychological aptitude certificates, the CNPD limits itself to pointing out the legal duty of such norms to be submitted to its prior opinion, under the terms of paragraph 4 of article 36 of the RGPD and of the Article 6(1)(a) of Law No. 58/2019 of 8 August.

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### III. Conclusion

On the grounds set out above, the CNPD considers that most of the changes introduced by the Draft Decree-Law do not give rise to reservations from the perspective of the protection of personal data, having noted the aspects that, in terms of the

application of the different amended legal diplomas , must be particularly careful.

Approved at the meeting of October 27, 2020

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