

National Data Protection Commission

OPINION/2022/28

I. Order

1. The Office of 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 that ensures the implementation, in the domestic legal order, of the Regulation (EU) 2018/1807 concerning a regime for a flow of non-personal data in the European Union - METD - (Reg. DL 1328/XXI1/2021).

2. The CNPD issues an opinion within the scope of its attributions 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, all of Law No. 58/2019, of 8 of August, which enforces the GDPR in the domestic legal order.

II. Analysis

3. The purpose of Regulation (EU) 2018/1807 of the European Parliament and of the Council of 14 November 2018 (Regulation (EU) 2018/1807) is to ensure the free flow of data other than personal data within the Union, establishing rules on data localization requirements, data availability to competent authorities and data portability for professional users.

4. Despite the Regulation being directly applicable in the domestic legal system, it contains provisions that require the adoption of implementing acts by the national legislator, namely the adoption of the necessary provisions for the identification of the competent authority as a single online national information point and of national contact and respective powers, the adoption of mechanisms and procedures for notification and communication to the European Commission by the competent national entity and the availability of data by this same entity, as well as the definition of the applicable sanctioning framework that is intended to be effective, proportional and deterrent in the event of non-compliance with the obligation to provide data.

5. Thus, the Proposed Decree-Law aims to ensure the implementation, in the domestic legal order, of Regulation (EU)

2018/1807, regulating the aforementioned matters.

6. In these terms, article 2 of the Proposal designates as a single national contact point and a single national information point on-line, for the purposes of applying the provisions of article 7 and the provisions of paragraphs 4

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and 5 of article 4 of Regulation (EU) 2018/1807, the Agency for Administrative Modernization, I. P. (AMA, I. P-).

7. In turn, Article 4 of the Proposal establishes that requests for assistance, within the scope of the procedure for cooperation between authorities, provided for in Article 7 of Regulation (EU) 2018/1807, are processed in the Internal Market Information System (IMI), pursuant to Regulation (EU) 1024/2012, of the European Parliament and of the Council, of 25 October 2012, on administrative cooperation through the Internal Market Information System. Until their effective implementation in IMI, the requests provided for in the previous number must be submitted through a form to be made available by AMA, I. P., on the ePortugal Portal.

8. Since personal data is not at stake in the terms defined in point 1 of article 4 of the GDPR, and taking into account that the form to be implemented (namely the one referred to in point 2 of article 4 of the Project) must comply with the technical guidelines for Public Administration explained in the Resolution of the Council of Ministers No. 41/2018, the CNPD has nothing to say about the content of the Project under analysis.

9. However, knowing that the Internal Market Information System (IMI) is the channel provided for, by Regulation (EU) 1024/2012, for assistance to administrative cooperation and that the Project aims to ensure the execution, in the domestic legal order, of Regulation (EU) 2018/1807 whose entry into force dates from 2018, it is seen, with some apprehension, that the implementation in terms of IMI is not yet completed. In the event that the legislator will refer to implementations necessary for the integration of the information systems of the entities involved with the IMI system (eg via webservice), it is recommended that a time commitment be established for the development of these services.

III. Conclusion

10. The analysis of the Draft Decree-Law does not raise new questions from the point of view of personal data protection.

Lisbon, March 30, 2022

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