

NATIONAL DATA PROTECTION COMMISSION

OPINION R/2020/111

I. Order

The President of the Commission on Economy, Innovation, Public Works and Housing of the Assembly of the Republic asked the National Commission for Data Protection (CNPd) to comment on Draft Law No. 41/XIV/1.3 - Establishes special contracting measures and amends the Code of Public Contracts and the Code of Procedure in Administrative Courts. The request made and the present opinion fall within the attributions and powers of the CNPD, as the national authority for the control of the processing of personal data, in accordance with the provisions of subparagraph c) of paragraph 1 of article 57 and n. 4 of article 36 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of article 3. , in Article 4(2) and Article 6(1)(a), all of Law No. 58/2019, of August 8 (which aims to ensure the execution , in the domestic legal order, of the GDPR).

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

II. appreciation

This draft law aims to approve special public procurement measures in terms of projects co-financed by European funds, housing and decentralization, information and knowledge technologies, implementation of the Economic and Social Stabilization Program, fuel management within the scope of the Integrated Management System for Rural Fires (SGIFR) and agri-food goods.

In addition to these special public procurement measures, this Proposal also makes the twelfth amendment to the Public Procurement Code, approved as an annex to Decree-Law No. 18/2008, of 29 January, in its current wording. Under the terms of the preamble, this amendment aims to speed up several procedural steps, seek to simplify, reduce bureaucracy and make public procurement procedures more flexible, increase the efficiency of public expenditure and promote more effective access to those contracts by economic operators as well as promoting greater and more

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proper integration of considerations. social and environmental nature in public procurement procedures, as well as attributing

greater importance to qualification and innovation in contract execution.

Finally, the seventh amendment to the Code of Procedure in the Administrative Courts, approved by Law no. incidents of lifting the automatic suspensive effect, in line with the provisions of the "Resources" Directives and in deepening the changes in this regard approved by Law no. No. 200/2008, of October 9th.

Proceeding now to analyze the Proposal from the point of view of its compliance with data protection legislation, it should be noted that article 8 introduces several changes to the Public Procurement Code, approved in an annex to Decree-Law No. 18/2008, of 29 January, in its current wording, with article 465, paragraph 1, now enshrining that "Information on the formation and execution of public contracts must be published on the public contracts portal, through forms according to the model contained in the decree of the members of the Government responsible for the areas of finance and public works.»

It should be noted that the ordinance in question must respect the principles relating to the processing of personal data, as well as the legal data protection regime enshrined in the GDPR and in Law No. 58/2019, of 8 August. The CNPD also recalls the need for this legal instrument, ordinance of the members of the Government responsible for the area of finance and public works, to be subject to the assessment of this Control Authority in accordance with the provisions of subparagraph c) of paragraph 1 of article 57. .° and Article 36(4) of the GDPR.

In turn, article 9 of the draft law, by adding article no. 176-A to the Public Procurement Code, extends the scope of application of the document classification regime, provided for in article 66. of this legal diploma, to the documents that constitute the application. Such addition, by allowing a possible restriction or limitation of access to the documents in question to the extent strictly necessary also for the safeguarding

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of personal data, reinforces the rights of data subjects, so its content is marked as positive.

### III. Conclusion

The Draft Law does not raise questions from the point of view of the protection of personal data.

The CNPD merely points out that the Ordinance provided for in the new wording of paragraph 1 of article 465 of the Public Contracts Code must respect the principles relating to the processing of personal data as well as the legal regime for data enshrined in the RGPD and in Law No. 58/2019, of 8 August, and be subject to its assessment, in accordance with the

provisions of subparagraph c) of paragraph 1 of article 57 and paragraph 4 of article 36 of the GDPR.

Approved at the meeting of September 23, 2020

Filipa Calvão (President)

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