

I. Request

1. The Commission for Economy, Public Works, Planning and Housing requested the National Commission for Data Protection (CNPd) to issue an opinion on Proposed Law No. 34/XV/1, which "Authorizes the Government to legislate on matters relating to the posting of drivers in the road transport sector, transposing Directive 2020/1057 and creating the respective sanctioning regime", which is, in turn, provided for in Implementing Regulation (EU) 2022/694.

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.º 1, letter a), all of Law n.º 58/2019, of August 8, which implements the GDPR in the internal legal order (hereinafter LERGD).

II. Analysis

3. The approved bill has the scope, in accordance with its article 2.º. No. 1, the "situations of secondment covered by articles 6 and 8 of the Labor Code, approved in annex to Law No. 7/2009, of February 12, in its current wording (Code of Labor), referring to drivers hired by road transport companies (carrier entity) that carry out non-bilateral international transport operations of goods or passengers;" [a)J, as well as "situations of secondment of drivers who carry out cabotage operations [b)], excluding the catalog of situations listed in the subsequent paragraph 2.

4. The legislation with a potential immediate impact on the protection of individual personal data, with regard to the processing of personal data and the free movement of such data, is essentially centered on Article 5, epigraphed "Declaration of Detachment ", namely with regard to the following elements listed in paragraph 2: identification of the carrier, when it is a natural person; transporter identification (b); transport manager contact (c); driver identification (d), date of commencement of the driver's employment contract; dates foreseen for the start and end of the secondment (e).

5. In accordance with paragraph 2 of the aforementioned Article 5, the information, which comprises the aforementioned personal data, contained in the posting declarations are kept on the IMI System platform for a period of 24 months.

Av. D. Carlos 1,134,1º 1200-651 Lisbon

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

geral@cnpd.pt

www.cnpd.pt

PAR/2022/75 1v.

6. Administrative cooperation and mutual assistance, regulated in article 8, is also relevant when providing for access via the IMI system.

7. ° The aforementioned IMI system consists of the internal market information system, provided for in Regulation (EU) 1024/2012, of the European Parliament and of the Council, of 25 October 2012, as mentioned in the explanatory memorandum of the proposed decree-law.

8. ° But also with relevance for the protection of individual personal data, we find article 12. °, with the heading "Access to information", whose wording is as follows: "Information regarding working and employment conditions to be made available to drivers posted and transport entities established outside Portugal, as well as the one existing in the IMI system, to be made available to the social partners, regarding posting, the provisions of Law No. 58/2019, of 8 August, must be considered".

9. However, this reference to this legal diploma regarding the treatment of access to information is, in itself, insufficient. And this because with direct relevance in the processing of personal data in the scope of labor relations, we only find and highlight article 28 of this Law n.º 58/2019, of 08/Aug. [LERGPDj].

10. ° By the way, we recall that Directive (EU) 2020/1057, in its article 1, through the heading "Specific rules regarding the posting of drivers", establishes in its no. 13, subparagraph c) that "the processing of data is carried out in accordance with the provisions of Regulation (EU) 2016/679", i.e. the GDPR. The present draft decree-law is silent on this express reference.

11. ° Accordingly, the CNPD considers that the express observance of the RGPD regarding the processing of personal data should be considered in the draft of this decree-law, in order to fully comply with the regulatory meaning of Directive (EU) 2020/1057.

III. Conclusion

Under the terms and grounds set out above, the CNPD issues this opinion.

Lisbon, November 03, 2022

Joaquim Correia Gomes (Rapporteur)