

I. Order

OPINION/2020/31

The Minister of Justice submitted the statement of the National Data Protection Commission

(CNPD) the Preliminary Draft Bill of Amendment to Law No. 112/2009, of 16

September, which establishes the legal regime applicable to the prevention of domestic violence,

protection and assistance to its victims (hereinafter 'the Draft').

The CNPD issues an opinion within the scope of its attributions and powers as

independent administrative authority with authority to control the

processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and by paragraph

4 of article 36 of Regulation (EU) 2016/679, of 27 April 2016 - Regulation

General on Data Protection (RGPD), in conjunction with the provisions of article 3, in

paragraph 2 of article 4, and in subparagraph a) of paragraph 1 of article 6, all of Law n.º 58/2019, of 8 December

August.

The Draft Bill aims to make the sixth amendment to Law No. 112/2009, of 16 September,

highlighting for the purposes of this opinion the changes introduced in the content

of the domestic violence database, with a view to improving, harmonizing and

update of official data on violence against women and domestic violence

in progress, in an approach that is intended to be holistic and not, as hitherto, segmented.

Thus, the name of the database is changed to "Database on Violence Against

Women and Domestic Violence" (BDVMVD), reflecting an extension of its scope

for criminal offenses other than domestic violence. remains responsible

for this data processing the General Secretariat of Internal Administration (SGMAI) (cf.

Article 37(1) of the amended law).

It is established in paragraph 2 of article 37 that the processing of data by BDVMVD refers to

cases in which criminal proceedings were initiated in the context of violence against

women and/or domestic violence, with the exclusive purpose of: promoting a

in-depth knowledge of violence against women and domestic violence,

contributing to the development of public policies specifically targeted

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for preventing and combating these forms of violence; get an integrated overview

on homicides and other forms of violence against women and violence

household, through the processing and cross-referencing of information from the

Criminal Justice and that encompasses data from other sectors, and that makes the analysis possible

of case trajectories.

The processed data cover the following typologies: occurrences registered by the organs

criminal police (OPC), respective risk assessments, arrests made and measures

police injunctions adopted; decisions on the attribution of victim status; measurements

of protection for the victim adopted at the beginning of the procedure or during its course, either through

the OPC, the court or the National Support Network for Victims of Domestic Violence

(RNAVVD); processes to promote the rights and protection of children and the existence of

contemporary procedures related to the exercise of responsibilities

parental; applied coercive measures, European investigation orders and decisions

protection policies; results of the processes throughout the different phases (survey,

criminal investigation, trial and appeal); crime reclassification situations; features

principal and ancillary and security measures to non-imputable; characterization of the situation

of those sentenced to serve a prison sentence and in a residence regime;

fulfillment of the victim's right to be informed about the person's release or escape

arrested, charged, pronounced or convicted; process identification with analysis

retrospective of homicide in a DV context; compensation awarded to victims (cf. no. 3

of article 37).

The data contained in the BDVMVD come from the following sources: Guarda

National Republican, Public Security Police, Judiciary Police, System

support computer for the activity of the courts (CITIUS), managed by the Instituto de Gestão

Finance and Justice Equipment, I.P. (IGFEJ), Attorney General's Office,

Commission for Citizenship and Gender Equality, National Commission for the Promotion of

Rights and Protection of Children and Youth, Directorate-General for Reinsertion and Services

Prisoners, Commission for the Protection of Victims of Crime and Social Security Institute, I.P.

(cf. paragraph 4 of article 37).

The Draft also prescribes that they have access to the database, in addition to the users of the

controller, the OPCs and the Public Prosecutor's Office.

It is also established in paragraph 6 of article 37 that the information is transmitted to SGMAI without

reference to personal data, with the exception, and where applicable, of the single number

criminal process identifier (NUIPC) and strictly necessary personal data

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identification of victims and accused, in order to enable the integration of data

from different sources and to an analysis of the trajectory of the cases.

The Draft Bill refers to a joint ordinance of the governmental areas of the Administration

Internal Affairs, Justice, Citizenship and Equality and Work, Solidarity and Security

Social Security, to be approved within 180 days, the regulation of operation of the BDVMVD, the

which will include the exact list of crimes covered in the database, the data model

to communicate according to the source, the access profiles and the rules and security measures that

will be implemented with a view to protecting personal data and in compliance with the

legal provisions in force.

The Draft Bill also provides, in paragraph 9 of article 37 of the amended law, that

communicated to the Commission for Citizenship and Gender Equality (CIG), as of

BDVMVD, with a quarterly frequency, data and indicators without any

identification of personal data, with a view to permanently updating the respective portal that promotes access and publicity of the main data and indicators.

Finally, paragraph 10 of article 37 provides that any provision of data to third parties will always be carried out without any identification of personal data and that all BDVMVD users are subject to the duty of confidentiality.

## II. appreciation

This Preliminary Project substantially expands the content of the database existing, increasing the sources of information that feed the BDVMVD, as well as increasing the volume of data to be transmitted. This change is justified by the need to have a global reading and monitoring of the phenomenon of violence against women and domestic violence, including all its stakeholders. Intends- integrated follow-up of each case, from beginning to end - which was partially done – as well as obtaining a transversal vision, which identifies victims or recurring perpetrators.

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The centralization of information of such a sensitive nature, and covering different holder categories, including children<sup>1</sup>, naturally lacks special safeguards. That is why it is to be applauded for now the provision of a specific regulation of functioning of the BDVMVD, through which measures can be adopted necessary and adequate to minimize the risks that this type of treatment from the outset closes. It should be noted that the CNPD will have to be consulted in advance, under the terms of Articles 57(1) and 36(4) of the GDPR.

On the other hand, as the processing of data covered by article 10 of the large-scale GDPR, an impact assessment on the data protection (AIPD), in accordance with point b) of paragraph 3 of article 35 of the

GDPR, since this assessment was not carried out prior to the procedure

legislation of this Draft (under the terms required by paragraph 4 of article 18 of Law no.

43/2004, of 18 August, last amended by Law No. 58/2019, of 8 August).

The AIPD will make it possible to find solutions that mitigate the risks to the rights, freedoms and

holders' guarantees, which must therefore be included in the

database operation.

As for the content proposed for Article 37, it is generally noted the

compliance with the provisions of paragraph 3 of article 6 of the GDPR, that is, the

responsible for the treatment, the purposes of the treatment, the types of data subject to

treatment, the categories of holders, the entities to whom the

data, lacking, however, to establish retention periods for the data, either a

maximum period, is a flexible period by reference to a defined criterion, in compliance with

of the principle of conservation limitation, enshrined in subparagraph e) of paragraph 1 of article 5 of the

GDPR

Let us now look at some specific aspects that need clarification in the wording of the

proposed article 37.

In paragraph 5, which regulates access to the database, the

OPCs that can access, which, taking into account the attributions conferred by paragraph 1 of article

3 of the Criminal Investigation Organization Law (LOIC)<sup>2</sup>, must be the same OPC

which are identified as sources of information in paragraph 4, ie GNR, PSP and PJ.

<sup>1</sup> Children require increased protection, particularly in view of possible

consequences that profiling in this context can have on your future life and should be

necessary measures are taken to prevent discrimination.

<sup>2</sup> Law no. 49/2008, of 27 August, last amended by Law no. 57/2015, of 23 June.

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In paragraph 6, it is provided that communications are transmitted without reference to data

personal data, and then completely exempt this rule, as there will be reference to NUIPC

or personal data that allow the identification of victims and those reported.

Indeed, considering the breadth of the database and the objective of integrating the

new information with older information, and aiming to have a picture that

goes beyond a specific criminal case, to obtain a cross-sectional view of recurrence

of situations, it is necessary to redesign the way in which the information was integrated into the

of data, by reference only to the NUIPC, making information necessary

additional.

In any case, even with exclusive reference to the NUIPC, it is considered that

was facing a processing of personal data, insofar as the data subjects were already

identifiable (cf. Recital 26 of the GDPR).

Thus, if to achieve the recommended purpose it is necessary to proceed with the identification of the

holders whenever communication is made to the database, from the outset it must be assumed

that there is processing of personal data and measures must also be taken

adequate to comply with the principle of data minimization, provided for in subparagraph c) of no.

1 of article 5 of the GDPR, as well as resorting to pseudonymization techniques, which allow

offer greater security to data processing without full and immediate exposure

full identification of the holders (whether victims, perpetrators, or children under

protection).

What the rule must safeguard, as a general principle to be observed when

implementation of the operation of the database, is that communications must contain

only personal data strictly necessary to allow data integration

from different sources.

As for the content of paragraph 7, which defines what will be regulated by ordinance, the CNPD understands

that the exact list of crimes must be included in the law and not in the ordinance. It is a

substantive issue, relating to the scope of application of the diploma itself and with repercussions on the

processing of data resulting therefrom, and therefore falls within the legislative competence of the Assembly of the Republic.

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In paragraphs 9 and 10, where the expression “without any identification of data personal data”, because it is inaccurate and equivocal, should be replaced only by “no data personal”. In fact, this is the meaning of the rule: that data not be communicated personal data to CIG and other third parties.

It is reiterated here that the concept of personal data is quite comprehensive and that, even without the so-called identifying data (e.g. name, NIC), the possibilities of identifiability of a person can be high, depending on the data communications and data that this third party may already have in its possession. So, what should be effectively safeguarded, and that responsibility lies with the person responsible for treatment – in this case, SGMAI – is that no data be communicated that allow directly or indirectly to make identifiable the holders of the Dice.

### III. Conclusion

Thus, on the grounds set out above, the CNPD understands that:

1. The draft ordinance that regulates the functioning of the BDVMVD;
2. A data protection impact assessment should be carried out, regarding the processing of data by BDVMVD, in accordance with the requirement of the Article 35(3)(b) of the GDPR, before drafting the database operation;
3. Criminal police bodies with access to the database must be properly identified in paragraph 5 of article 37;
4. The exact list of crimes covered by the BDVMVD must be defined in the law and not be

relegated to concierge.

5. The wording of paragraphs 9 and 10 of the  
article 37

Lisbon, March 23, 2020

Luís Barroso (Member, who reported)