

I. Order

1. The Budget and Finance Committee of the Assembly of the Republic sent to the National Data Protection Commission (CNPd), for an opinion, Proposal for Law No. 38/XV/1.3 (GOV) - Approves the State Budget for 2023 .
2. The request made and the present opinion fall within the powers and competences 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 of Article 36(4) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation - RGPD), in conjunction with the provisions of Article 3 .°, in paragraph 2 of article 4 and in paragraph a) of paragraph 1 of article 6, all of Law no. 58/2019, of August 8 (which aims to ensure the implementation, in the internal legal order, of the RGPD).
3. The assessment of the CNPD is restricted to aspects of the regime relating to the processing of personal data, that is, operations that focus on information concerning natural persons, identified or identifiable - cf. paragraphs 1) and 2) of article 4 of the RGPD -, focusing on the precepts that foresee or imply processing of personal data.

II. Analysis

4. The Draft State Budget Law for 2023 does not introduce significant novelties with regard to the processing of personal data, which is why this opinion will focus primarily on rules that reproduce provisions of previous State Budget laws, which, by its impact on the fundamental rights of citizens deserve the repeated attention of the CNPD.
5. It is emphasized that what stands out here are only those provisions that are in clear contradiction with the constitutional principles and the rules of law of the European Union by which the rules that provide for the processing of personal data must be guided, and that, for that's right, they justify the CNPD's insistence on each Law Proposal that it is called upon to appreciate.
6. It is also clarified that

i. The mere prediction (without regulation) of interconnections of databases of public entities with other entities

7. In this context, one cannot fail to highlight the persistent legislative technique of, in the State Budget Law Proposal, providing for processing of personal data that involves considerable risk for the

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citizens without this provision being accompanied by the definition of the main elements of such treatments and appropriate measures to mitigate or prevent the risk. The option of referring the definition of the object and scope of the processing of personal data to the regulatory plan and, especially, for protocols between entities, implies returning to the discretion of administrative entities, without the minimum (binding) guidance of the law, treatments that imply the restriction or risks of further restriction of the fundamental rights of citizens, which is not at all compatible with the principle of the democratic State based on the rule of law and with the requirements arising from it regarding the predictability of legal restrictions on the fundamental rights of citizens.

8. In effect, as with previous proposals¹, this Proposal for Law renews and expands the provision of data interconnections and databases under the responsibility of different public entities and also between public and private entities, without specifying the databases covered and without even identifying the public entities, services or public bodies whose databases are the object of that operation.

9. It should be noted that the CNPD is not assessing the political-legislative option underlying such provisions, but rather the terms in which such option is implemented in this legislative plan.

10. It is undeniable that the generalization of interconnections and reciprocal access to information contained in databases held by public entities, and some private entities, implies risks to the rights, freedoms and guarantees of citizens. At stake are the risks associated with the de facto possibility of interrelationship of all information relating to each individual citizen², which not only impact on their privacy (restricting it), but also on their freedom and freedom to develop their personality (restricting or conditioning them), constitutionally recognized to each citizen, especially highlighting the risk of discrimination, which in each historical moment is renewed under different guises - just remember how, even today, nationality and naturalness have been shown to be factors of discrimination in Europe.

1 Cf. Opinion 2022/37, of May 3, accessible at <https://www.cnpd.pt/decisooes/pareres/> and Opinion 2020/4, of January 14, accessible at <https://www.cnpd.pt/decisooes/history-of-decisions/?year=2020&type=4&ent=&pod=2>

2 As in previous opinions the CNPD has highlighted, in this interconnected web of databases, from any identifying element - e.g., the civil identification number, the tax identification number or the electronic address - the entire information relating to each citizen held by the Portuguese Public Administration and even by private entities covered by such provisions.

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11. These risks have been accentuated in recent times, clearly showing the fragility of many of the information systems that integrate citizens' sensitive data and the challenges that interconnections represent for the integrity of this data.

12. Understanding the objective of efficiently managing information and streamlining administrative procedures, especially in the field of the social economy and providing care to people in need, and the usefulness, for this purpose, of sharing information about citizens held by the State and by other public legal persons, as well as by private entities, the CNPD does not discuss, as this is not its function, the option of restricting fundamental rights resulting from the provision of these treatments.

13. What the CNPD is highlighting and considers unacceptable in a Rule of Law is the generic and open provision of such interconnections and accesses, without, at the legislative level, defining, at least, who are the public entities or services responsible for such operations of processing citizens' personal data and which databases of those responsible are subject to such operations. This is a minimum of normative density that cannot fail to be demanded of the national legislator in the context of matters that have a direct impact on rights, freedoms and guarantees - cf. Articles 2 and 165, paragraph 1, point b) of the Constitution of the Portuguese Republic (CRP).

14. It is insisted: the determination of the extension and intensity of the relationship of the citizens' personal information, in particular when it respects their private life, revealing dimensions that the constituent legislator and the legislator of the Union wanted especially to protect, cannot be left in the hands of the Public Administration without minimally precise and clear legal commands.

15. The continuous option for open legislative norms that delegate to the administrative bodies very broad decision-making

powers regarding the processing of data that have direct repercussions on the most fundamental dimensions of the citizen - generically foreseeing the possibility of relating all personal data held by the Public Administration - puts in crisis the first guarantee of the constitutional regime of fundamental rights, which is to reserve to the law the definition of restrictions and conditions of rights, freedoms and guarantees (cf. n.º 2 of article 18 and subparagraph b) of n. 1 of article 165 of the CRP). And it undermines the essential function of a legislative norm, which is to ensure citizens predictability regarding future restrictions and conditioning of their fundamental rights.

16. It is in the light of these concerns that the CNPD highlights here, among the norms that provide for interconnections of personal databases, article 148 of the Proposed Law, which fails to identify the public entities covered, nor the databases data object of the interconnection.

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17. As the CNPD has already stated with regard to a similar rule introduced in previous State Budget laws, any interpretative effort to, based on the diplomas referenced in paragraph 1 of this article and in particular the purposes set out therein, reveal the The list of public entities and bodies whose databases are addressed here, fails in the face of predictions such as the one relating to the purposes of interconnection with the databases of Santa Casa da Misericórdia de Lisboa (cf. paragraph c) of article 217.1. °) or that relating to the National Strategy for the Integration of Homeless People 2017-2023 (cf. paragraph e) of paragraph 1 of article 148), in which the quantity and variety of public attributions enunciated in the Resolution of the Council of Ministers n.º 107/2017, of July 25, raises concerns about the crossing of all databases of the Central Public Administration.

18. Furthermore, article 148 refers the definition of the various elements of processing to protocols to be concluded between entities - which, it should be remembered, are not identified in the standard (only private entities are specified) -, therefore abandoning , to the wide administrative discretion the definition of the scope and reach of the treatment and of the databases and of the personal data object of the same.

19. The CNPD reiterates, therefore, the recommendation to densify article 148 of the Proposed Law, at least by specifying the public entities covered and the databases object of interconnection.

20. It is also important to pay attention to article 86 of the Draft Law, because, by resorting to an imprecise concept to characterize the processing of personal data that it provides for, it extends the scope of the same processing indefinitely and beyond what is necessary.

21. In fact, by regulating the direct consultation, in the context of executive proceedings, by the IGFSS, IP, and ISS, IP, of an extensive range of databases, including the database of the Tax and Customs Authority, the Article 86 of the Bill refers to access to “other similar records and files”. The CNPD has already ruled on a similar provision introduced in previous State Budget laws, essentially maintaining its understanding.

22. Not reaching any other similar registers or archives whose creation and maintenance are intended to fulfill a registration function in the public interest - which do not correspond to those already listed in that norm -, and whose access may constitute an ideal means for compliance of the role of those public entities, the CNPD recommends the elimination, in paragraph 1 of article 86, of such a reference, which extends the processing of personal data in an undetermined and unnecessary way.

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ii. Open network publicity of the list of debtors

23. Under the heading “Measures of contributory transparency”, article 84 of the Proposed Law renews the imposition of disclosure of lists of taxpayers indebted to social security, provided for in previous State Budget laws.

24. The CNPD has been pronouncing on this processing of personal data (cf. Opinions 38/2005, 16/2006, 43/2016, 54/2018, 2020/4 and, finally, 2022/4), always underlining the impact that the dissemination of this information on the Internet has on people's private lives, in terms that are manifestly excessive, if not unnecessary, for the intended purpose.

25. The option for the online disclosure of information relating to each person has an impact that does not end with the purpose of this publication - which will be to make known to those involved in contractual relations that the possible counterparty currently has debts to Social Security -, extending up for the future. In fact, the information made available on the

Internet will remain far beyond what is necessary to fulfill the purpose of its publication, in a logic of dissemination and perpetuation of personal information, given that such a context facilitates the collection, aggregation, crossing and subsequent use of that information for the most diverse purposes. Indeed, the disclosure of personal data on the Internet allows and easily enhances the aggregation of information about people, namely the establishment of profiles, which are likely to serve as a means of unfair discrimination against people, as they allow their use very much for beyond the period of time when the law dubiously deemed it necessary to stigmatize people with Social Security debts.

26. In particular, taking into account that there are means available today to fulfill the same purpose with much less impact, avoiding the perpetuation of people's stigmatization before the general public.

27. The CNPD once again insists, for the reasons given above, that it is time to rethink this rule, with a view to properly harmonizing the public interests pursued and the fundamental rights of the holders of data restricted by this provision, in clear violation of the principle of proportionality .

III. Conclusions

28. In the terms developed above, and recalling the risks to the fundamental rights of citizens associated with the multiplication of interconnections of personal data between the information systems of different public entities and other private entities, which claim their precise delimitation at the legislative level - instead of a mere reference to a broad area of administrative autonomy for defining the

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data processing, by agreements to be signed between administrative entities and between these and private entities discretionary,-, the CNPD recommends:

The. the densification of article 148 of the Proposed Law, at least by specifying the public entities covered and the respective databases subject to interconnection, in compliance with the constitutional requirements of precision and clarity of restrictions

on rights, freedoms and guarantees:

B. the removal, in Article 86(1), of the reference to 'other similar records and files', which indefinitely and unnecessarily extends the processing of personal data provided for therein.

29. The CNPD once again recalls the manifest disproportionality of the forecast for the publication of lists of Social Security debtors (now in paragraph 1 of article 84), recommending that such forecast be reconsidered or, at least, the adoption of measures mitigating its impact, at a time when technological evolution provides alternative solutions capable of guaranteeing the intended purpose, avoiding the perpetuation of stigmatization of people.

Approved at the meeting of November 2, 2022

Filipa Calvao (President)