

I. Request

1. The Assembly of the Republic, through the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees, requested the National Data Protection Commission (CNPd) to pronounce on Proposed Law No. 59/XV/1a (GOV), transposing Directives (EU) 2022/211 and (EU) 2022/28 on the harmonization of rules on the protection of personal data.

2. The CNPD issues an opinion within the scope of its attributions, as the national authority for the control of the processing of personal data, conferred by paragraph 2 of article 30, in conjunction with paragraph of article 44, all of which Law No. 59/2019, of August 8, which approves the rules relating to the processing of personal data for the purposes of prevention, detection, investigation or repression of criminal offenses or the execution of criminal sanctions.

3. The directives being transposed introduce specific changes to legal acts adopted by the Union before 6 May 2016, in the field of judicial cooperation in criminal matters and police cooperation, with regard to specific provisions that provide for the treatment of data by the competent authorities, with a view to ensuring consistency with the data protection regime in force in the Union, in particular with Directive (EU) 2016/6801 ('LED Directive'), as provided for in Article 62(6) .° of this directive.

4. Directive (EU) 2022/2112 thus amends Council Framework Decision 2002/465/JHA, with regard to its harmonization with EU rules on the protection of personal data. In this case, the Directive adds a paragraph to Article 1(10) of the Framework Decision, in order to refer to the data protection regime of the LED Directive.

5. Council Framework Decision 2002/465/JHA, concerning joint investigation teams, is transposed into the national legal system by Law no. 144/99, of 31 August, last amended by Law no. 87/2021, of December 15th.

1 Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of preventing, investigating, detecting

or repressing offenses or enforcement of criminal sanctions, and the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

2 Directive (EU) 2022/211 of the European Parliament and of the Council of February 16, 2022.

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/2023/14

1 v.

6. Directive (EU) 2022/2283, for its part, amends Directive 2014/41/EU, on the European investigation order in criminal matters, also with regard to its harmonization with the rules for the protection of Union data currently in force. To this end, Article 20 of the Directive, which made reference to an outdated data protection legal framework, is deleted. Directive 2014/41/UE has been transposed into the national legal system by Law No. 88/2017, of 21 August.

I. Analysis

7. The Proposed Law (PPL) now under analysis is, consequently, also introducing specific changes to the transposition laws indicated above, in the sense of starting to include reference to the legal regime for the protection of personal data currently in force in the Union, or namely, for the LED Directive, and for the national transposition law.

8. Thus, the PPL provides for the amendment of Article 145-A of Law No. 144/99, adding a new paragraph 9 to the article, which almost literally transposes Article 1 of Directive (EU) 2022 /211, determining that this directive and the national law that transposes it are applicable to the processing of personal data when the information legitimately collected, within the scope of the work of the joint investigation teams, is used by the competent authorities of other participating States that otherwise they would not have access. The CNPD understands this amendment to be appropriate and in line with the directive being transposed.

9. The PPL also provides for the inclusion of a new point 10 in article 145-A, which provides that Law no. 0 34/2009, of July 14, in its current wording, as well as Law n.0 58/2019, of August 8.

10. This new legal provision does not result from Directive (EU) 2022/211, in transposition, nor is its purpose understood.

Firstly, to the processing of personal data arising from Law No. 144/99, Law No. 59/2019 is immediately applicable, which transposes the LED Directive, precisely because it is in the field of police cooperation and cooperation judiciary in criminal matters.

11. Secondly, the reference to Law No. 58/2019, of August 8, which implements Regulation (EU) 2016/679 (GDPR) does not seem appropriate because the data processing in question here is excluded from its scope of application, by virtue of paragraph 1 of its article 2 which, in turn, refers to the exclusions of article 2 of the RGD, especially relevant here the exclusion of paragraph d) of paragraph. Article 2(2) of the RGD, regarding data processing carried out by competent authorities for prevention purposes,

3 Directive (EU) 2022/228 of the European Parliament and of the Council of February 16, 2022.

PAR/2023/14

two

e_.p

National Data Protection Commission

investigation, detection and repression of criminal offences. In addition, the reference to Law 34/2009 also seems unnecessary, since, like Law 59/2019, it is part of the national legal system and, therefore, is applicable. In addition, Law 59/2019 itself, in its article 68, lists the situations of application of Law 34/2009 in the specific context of criminal proceedings. It should also be underlined that, if one wants to establish in this law what the personal data protection regime is, then it would be insufficient to refer only to Law No. 34/2009, and one should also, and in the first place, refer to Law No. 59/2019, which establishes the general data protection regime in this field.

12. Thirdly, the CNPD considers that the proposed wording of the rule is incorrect, from a terminological point of view, since it specifies data processing operations, such as conservation or access, along with the term "processing", and in parallel with "personal data protection" and "security".

13. In this sense, because the proposed addition to the new point 10 does not transpose any norm of Directive (EU) 2022/211, it is wrongly formulated regarding the legislative reference to Law 58/2019 and regarding the wording and terminology used and, finally , it is unnecessary (and if maintained, it would be insufficient) regarding the reference to Law 34/2009, the CNPD considers that this number 10 should not be added.

14. With regard to the transposition of Directive (EU) 2022/228, article 3 of the PPL provides that paragraph 2 of article 8 of Law no. 88/2017 is repealed.

15. The directive being transposed hereby provides for the deletion of the entire article 20 of Directive 2014/41/EU, under the heading 'protection of personal data', as the legal framework contained therein has been replaced by the LED Directive.

16. Insofar as the national law already contains the appropriate references to the new legal regime of the Union in the field of judicial cooperation in criminal matters, that is, to the LED Directive, in paragraph 1 of article 8 of Law no. 88/2017, it seems appropriate to repeal paragraph 2 of the article.

17. However, regarding paragraph 3 of article 8, the CNPD warns of the fact that the reference to a law that has already been revoked remains in the second sentence of the rule - Law no. 67/98, of 26 October, the previous personal data protection law.

18. Therefore, it is necessary, at the very least, to update Article 8(3). Furthermore, regarding the wording of this rule, from a terminological point of view, exactly the same questions as those set out above are raised, which is why the observations already made are reproduced here. It is understood that this rule is unnecessary, but if it is maintained, it should be reviewed in the sense of only mentioning that the treatments of

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/2023/14 2v.

Personal data carried out under this law is applicable to Law n.º 59/2019, of October 8, as well as Law n.º 34/2009, of July 14.

II. Conclusion

19. Thus, with the reasons set out above, the CNPD understands:

The. The addition of the new point 9 in article 145, of Law No. 144/99, of August 31, is appropriate;

B. The addition of the new point 10 in article 145-A is unnecessary and incorrect, so it should be deleted;

w. The repeal of paragraph 2 of article 8 of Law no. 88/2017, of August 21, is correct;

d. An amendment should be added to Article 8(3) of Law No. 88/2017, of August 21st, which at least updates the reference to Law No. 67/98, of October 26th, meanwhile revoked, replacing it with a reference to Law No. 59/2019, of August 8, with the

wording of the rule still to be changed to a more adjusted formulation from a terminological point of view, in line with what was suggested in point 18 of this opinion.

Approved at the meeting on February 22, 2023

Filipa Calvao (President)