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NATIONAL DATA PROTECTION COMMISSION

OPINION/2019/32

I. Order

The Energy Services Regulatory Entity sent to the National Commission for the Protection of Personal Data (CNPd) the project for the Regulation of Services of Intelligent Electricity Distribution Grids,

The request made and the opinion issued now derive from the attributions and powers of the CNPD, as an independent administrative entity with powers of authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and by the paragraph 4 of article 36 of Regulation (EU) 2016/679, of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of paragraph 1 of article 21, ° and no. 1 of article 22, both of Law no. 67/98, of 26 October, amended by Law no. 103/2015, of 24 August (Personal Data Protection Law) .

This opinion only concerns the provisions relating to the processing of personal data.

II. appreciation

The Regulation project defines some aspects of the processing of personal data that smart electricity distribution networks imply. Given that these processing of personal data are imposed and regulated at the legislative level, and it is not up to ERSE to set new conditions for carrying out such processing for the protection of personal data, it is important to emphasize that intelligent electricity distribution networks carry a high risk for the personal data of end customers, which the current legislation does not prevent.

In fact, taking into account that consumption data must be kept for two and three years (cf. paragraph 8 of article 17 of Decree-Law No. 68-A/2015, of 30 April, which transposes Directive 2012/27/EU, of October 25, 2012) and that its registration is carried out with an intense frequency (every 15 minutes - cf. article 7 of Ordinance No. 231/2013, of 22 of July, and subparagraph f) of no.

AV. D. CARLOS I, 134-Io | 1200-651 LISBON | WWW.CNPd.PT | Tel-,+3S1 213 928 400 | FAX: +351 213 976 832

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the creation and analysis of behavior profiles on end consumers, with a significant impact on their private life. This impact is not only reflected in marketing adapted to the detailed profile of the customer or in the risk of discrimination in the price to be charged for the energy distribution and supply service, but also in the risk of improper use of the information and the intention of using it for the purposes criminal investigation'.

Above all, the massive set of information on people's habits or characteristics and health status that georeferencing and the Internet of Things allow to potentially collect the risk of combination or relationship of different types of personal data, making it imperative to adopt measures to mitigate such impacts.

To this extent, the CNPD considers it essential that entities that will process personal data from intelligent electricity distribution networks comply with the GDPR, in particular with regard to the obligations to carry out an impact study on data protection. personal data, as well as the adoption of data protection measures by design and by default (cf. Articles 25 and 35 of the RGPD, as well as CNPD Regulation No. 1/2018, published in the Diário da República 2nd Series, of 30 November¹ 2).

Considering now the articles of the Draft Regulation, and taking into account the attributions of ERSE, the CNPD understands that the provisions of paragraph 3 of article 7, as well as article 11, are likely to generate confusion as to the legal basis for accessing personal data.

In fact, it is important to clarify from the outset that the processing of detailed personal consumption data, in particular access to such data, is, in some cases, imposed by law or necessary for the performance of a service provision contract (as is the case with access to by the supplier), while in others, even if there is an underlying

¹ In this sense, see the opinions of the Working Group of Art. 29, which brought together the data protection commissioners of the Member States of the European Union, No. 12/2011, of April 4, 4/2903, of April 22, 2013 (WP205), accessible at <https://ec.europa.eu/iustice/article-29/documentation/opinion-recominendation/files/2011 /wp 183 en.pdf>

<https://ec.europa.eii/iustice/article-29/documentation/opinion- recoinmendation/files/2013/wp205 en.pdf>

² Accessible at https://www.cnpd.pt/bin/decisoos/regulamentos/regulamento_1_2018.pdf

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service provision contract, access is only legitimized if the third party that intends to access the data demonstrates that there was consent from the data subject for this purpose - since the person responsible for the collection and conservation of personal data is not a party to that contract (see points a), b) and c) of Article 6(1) of the GDPR).

Secondly, the CNPD recommends that it be expressly mentioned in the Articles of the Project that personal consumption data be used only for specific purposes, in accordance with Article 5(1)(b) of the GDPR. Thus, for example, access by suppliers can only be aimed at complying with legal duties imposed in the context of smart grids or for billing. As for third parties, the purpose or purposes must be specified in the contract that justifies access or in the declaration of consent regarding access, depending on what serves as the basis for the lawfulness of the treatment.

Thirdly, considering that the frequency of collection of consumption data and the periods for keeping the information result from prior legal or regulatory imposition, and that, as mentioned above, this has a considerable impact on the privacy of data subjects, the CNPD recommends, as a measure to mitigate this impact, that the identification of consumption (on the electronic platform for providing data or by other electronic means) is not carried out by the name of the final customer, when it is a natural person, but by the Code of the Delivery Point .

Finally, the CNPD considers it convenient that this project refers to the GDPR, highlighting some of the main obligations arising from it, namely regarding the adoption of security measures or the provision of information on the processing of personal data.

Lisbon, June 12, 2019

Filipa Calvão (President, who reported)

AV. D. CARLOS I, 134 - 1o | 1200-651 LISBON | WWW.CNPD.pt | TEU+351 213 928 400 | FAX: +351 213 976 832