

National Data Protection Commission

OPINION/2021/105

I. Order

1. The Ministry of Foreign Affairs, through the Directorate-General for Foreign Policy, asked the National Data Protection Commission (CNPd) to comment on the draft Agreement for the Reciprocal Promotion and Protection of Investments (APPRI) between the Portuguese Republic and the Islamic Republic of Iran ('the Agreement'),
2. The CNPD issues an opinion within the scope of its attributions and powers as the national control authority for the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and paragraph 4 of article 36. of Regulation (EU) 2016/679, of 27 April 2016 - General Data Protection Regulation (RGPD), in conjunction with the provisions of article 3, paragraph 2 of article 4, and in subparagraph a) of paragraph 1 of article 6, all of Law n.º 58/2019, of 8 August.
3. This Agreement intends to intensify economic cooperation, promoting and protecting in the territory of each Party the investments made by investors of the other Party, through the creation of favorable conditions for responsible investments for both natural and legal persons.
4. The Agreement regulates, namely, the promotion of investments, their protection, the regulatory measures applicable to them, gains and losses, transfer of payments, and the different contexts and solutions for the resolution of disputes.
5. The Agreement does not provide for the transfer of personal data to third countries.

II. Analysis

6. Given the purpose of the Agreement and analyzing its text, it appears that there is no transfer of personal data underlying the terms of the Agreement. If there is processing of personal data, within the scope of investments made by individuals or Portuguese companies in the Islamic Republic of Iran, such data processing will be covered from the outset by the territorial scope of the GDPR, pursuant to paragraph 1 of its article. 3rd, it is up to those responsible for the treatments to comply with legal obligations in terms of data protection (eg human resources data).
7. Any processing of data relating to Portuguese holders carried out by public entities of the Counterparty, resulting from this

Agreement, are subject exclusively to Iranian legislation, since they are carried out directly in that country, and do not result from an international transfer of data between Portugal and Iran.

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8. Regarding the content of Article 17 of the Agreement, under the heading "Publication of information and transparency", which provides that the Parties make public, whenever possible via the Internet, their laws and regulations, administrative and judicial decisions, international agreements that may affect the investments of investors of the other Party, the CNPD underlines that a part of this documentation does not contain personal data or will already be duly anonymized. However, it will be necessary to ensure that the administrative and judicial decisions made available do not contain personal data, which would be irrelevant to the objective, in view of transparency, of knowing and analyzing the meaning of the decision, based on the facts and merits of the case without need identification of the natural persons involved.

9. Thus, with regard to Portugal, in accordance with national legislation for the protection of personal data, the availability of this information implies the adoption of effective measures of anonymization, whenever decisions and/or other documents contain personal data of the stakeholders, irrespective of what is stated in the Agreement.

10. However, Article 17(2) could be reinforced by adding in the last sentence: 'orbe contrary to domestic laws protecting [personal data] or confidentiality (...)'.

11. Given the purpose and content of the Agreement, which does not imply the international transfer of personal data, the CNPD has no additional remarks to make.

III. Conclusion

12. For the reasons indicated above, as this Agreement does not result in the transfer of personal data to a third country, there is no need to introduce any rules relating to data protection.

13. Without prejudice to the obligation that already results from national legislation not to disseminate administrative and

judicial decisions on the Internet that contain personal data without having previously been anonymized, so as not to make the holders referred to therein identifiable, paragraph 2 of article 17 of the Agreement may be amended to reference such limitation on publication of information.

Lisbon, August 17, 2021

Filipa Calvão (President, who reported)