

National Data Protection Commission

OPINION/2G21/Ó1

## I. Request

1. The Office of the Secretary of State for the Presidency of the Council of Ministers submitted to the National Data Protection Commission (CNPd), for opinion, the draft decree-See that creates the social tariff for broadband internet access services.
2. The CNPD issues an opinion within the scope of its attributions and competences as an independent administrative authority with powers of authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57, in conjunction with subparagraph b) of paragraph 3 of article 58, and with paragraph 4 of article 36, all of Regulation (EU) 2016/679, of 27 April 2016 - General Regulation on Data Protection (hereinafter RGPD), in conjunction with the provisions of article 3, paragraph 2 of article 4, and paragraph a) of paragraph 1 of article 6" all of Law n° 58 /2019, of August 8, which executes the RGPD in the internal legal order.

## II. Analysis

3. This draft decree-law aims to create the social tariff for the provision of broadband Internet access services, to be applied to consumers with low incomes or with special social needs, aligning their eligibility with the criteria in force for the social tariffs for other essential services, namely energy and water.
4. The procedure for assigning the social tariff for the provision of broadband Internet access services does not require a request or request from interested parties. In accordance with what is proposed in paragraph 2 of article 9, companies that offer broadband internet access services obtain the eligibility of a contract holder, with ANACOM, by sending the following personal data: tax identification and tax address.
5. ANACOM, in turn, consults the competent services of Social Security and the Tax Authority and Customs (AT) for this purpose. This consultation is carried out through the Public Administration Interoperability Platform (iAP) managed by AMA - Agência da Modernização Administrativa, í. P., upon prior execution of a data protection agreement, to be submitted for consideration by the National Data Protection Commission.

6. It is emphasized that, in addition to interoperability, best practices must be adopted to guarantee 3 data security and accountability in accessing and using it. Since it is an option

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legislator does not regulate the processing of data in question, the analysis of this data query is reserved for when the data protection agreement is sent to the CNPD for consideration.

7. Pursuant to paragraph 5 of article 9. «The procedures referred to in this article may be subcontracted by ANACOM to a third party»

8. It should be noted that the location where this third party must provide the service (at ANACOM's premises or at its own premises) has implications for the establishment of communication circuits in a secure network, which must be taken into account.

9. Finally, it should be noted that, if ANACOM uses the subcontractor for the execution of the protocol to be concluded with AMA, the subcontractor must apply the appropriate technical and organizational measures to guarantee the security of the treatment, ensure that the persons involved undertake to confidentiality and inform WADA of all information necessary to demonstrate compliance with the obligations under the GDPR, including facilitating and contributing to audits or inspections conducted by WADA or by another auditor mandated by WADA, pursuant to Article 28 of the GDPR .

### III. Conclusion

10. Therefore, on the grounds set out above, the CNPD recommends reformulating Article 9(5) in order to include an express reference to the subcontractor's obligations under Article 28 of the GDPR.

11. Regarding the consultation to be carried out by ANACOM with the competent services of Social Security and Tax and Customs Authority, since the draft diploma does not regulate the processing of data, the CNPD reserves its pronouncement for a later time, when the data protection agreement provided for in paragraph 4 of article 9 is sent to the CNPD.

Lisbon, May 17, 2021

Maria Cândida Guedes de Oliveira (Rapporteur)