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CNPD

National Data Protection Commission

OPINION/2022/4

I. Order

1. The Secretary of State for Justice asked the National Data Protection Commission (CNPD) to comment on the Project of «Protocol for the interconnection of information identifying the land structure and ownership of rural, mixed and urban properties within the scope of the simplified cadastral information system and one-stop shop for the building».

2. The CNPD issues an opinion within the scope of its powers 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, subparagraph b) of Article 58(3) and Article 36(4), all of Regulation (EU) 2016/679, of 27 April 2016 - General Data Protection Regulation (hereinafter GDPR), in conjunction with the provisions of article 3, paragraph 2 of article 4 and paragraph a) of paragraph 1 of article 6 of Law No. 58/2019, of 8 August, that enforces the GDPR in the domestic legal order.

3. This Draft Protocol intends to regulate the electronic sharing of all relevant information on the characterization and identification of rural, mixed and urban buildings and their owners, and on the characterization of the national territory, by the granting entities, with the Balcão Único do Prédio platform (BUPi platform), for the purposes of identification, geographic location and suppression of omissions in the land register and other purposes of identifying buildings, being understood as such the use of this information for the pursuit of the attributions of the granting entities (cf. clause 1.a). It also regulates the processing of personal data between access, communication and other personal data processing operations between the granting entities, also providing for the sharing of information with the municipalities and the coordination and regional development commissions, under the terms indicated in clause 1, a from the project.

4. The protocol is expected to be concluded between the entities indicated in paragraph 2 of article 27 of Law no. 78/2017, of 17 August, in accordance with the provisions of Law no. 65/ 2019, from 23 August.

5. However, by Resolution of the Council of Ministers No. 45/2020, of 16 June, the attribution and powers of the Technical

Coordination Center were attributed to the Mission Structure for the Expansion of the Simplified Cadastral Information System (eBUPi) , which also appears among the granting entities.

II. Analysis

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i. Implementation of data protection principles: limitation of purposes, proportionality and minimization of data, and liability

The. Purpose limitation principle

6. From the strict point of view of the protection of personal data, it is especially important to underline the vague terms used to characterize the purposes of sharing information in the context of BUPi, which, in paragraph 1 of clause 1,a of the Project, are described as: «identification, geographic location and suppression of omission in the land register and other purposes of identification of the buildings, being understood as such the use of the referred information for the pursuit of the attributions of the granting entities» (emphasis added). The same vague terms are used, in paragraph 3 of clause 1,a, when it is foreseen that the sharing of information with the municipalities and the coordination and regional development commissions is carried out "for the purposes of identification, geographic location and suppression of omission in the land register and other purposes of identification of the buildings, being understood as such the use of the referred information for the pursuit of the respective attributions» (emphasis added).

7. Bearing in mind that paragraph 1 of article 27 of Law no. 78/2017 precisely defines the purposes of sharing information and that the information shared comprises or may comprise personal data, under the terms listed in clause 2.a (cf. also point 1) of article 4 of the GDPR), the CNPD recalls that it is essential to specify the purpose or purposes of the processing of personal data, in accordance with the principle of limitation of purposes (cf. Article 5(1)(b) of the GDPR). All the more so since, without a delimitation of the purposes, it is not possible to assess the adequacy and necessity of the processing of personal data, as

required by point c) of paragraph 1 of article 5 of the RGPD.

8. However, formulas such as the other purposes of identifying buildings, understood as such the use of information for the pursuit of the respective attributions, are manifestly insufficient to delimit the purpose or purposes of the processing of personal data - at the limit, it is done match the purpose of any municipal assignment or of any other of the granting entities, which does not allow an assessment and, therefore, does not allow to state that the sharing of personal data is adequate and necessary for the intended purpose.

9. It is therefore important, under penalty of being considered to be in disagreement with subparagraphs b) and c) of paragraph 1 of article 5 of the GDPR, that the purposes of sharing and using the data in clause 1 are densified. a, without extending its scope to all and any attribution of the public entities mentioned in the text of the Project.

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B. The requirement to contextualize accesses as a means of complying with the principle of proportionality and data minimization

10. Furthermore, precisely to allow the assessment (ex ante and ex post) of the adequacy and necessity of access, consultation and subsequent use of personal data, all operations on the BUPi platform must be contextualised. It is not enough, therefore, to say in paragraph 7 of clause 3.a that "For audit and security purposes, the granting entities undertake to send eBUPi, at each invocation, the identification of the individual user who requests the information, as well as to adopt the technical and organizational measures that guarantee this identification.», being essential the contextualization of the access or consultation. This requirement makes it possible to prevent or, at the very least, detect accesses and queries based on mere curiosity or for other reasons unrelated to the direct realization of a purpose of public interest that falls within the purposes of BUPi.

11. Indeed, it is essential to include the reason for access, also as an element responsible for the user's conduct - since the user, with a justification mechanism, would be alerted to the consideration and eventual demonstration of the need for access.

12. The CNPD therefore recommends providing for and regulating the requirement to contextualize access to BUPi in the Protocol Draft.

ç. Clear delimitation of the rules applicable to data controllers

13. Another aspect that needs to be revised, in the Draft Protocol, is related to the equality of the granting entities regarding the various aspects of the regime defined therein, when it is certain that, with regard to the processing of personal data, they do not are on the same plane. In fact, it is not possible to define a common regime regarding the consultation and use of information for the grantors, when some of them are not responsible for the treatment, but only processors (cf. paragraphs 7) and 8) of article 4 of the GDPR). For this reason, it is recommended to review the title and paragraph 1 of clause 4.a, as well as the proem or body of clause 17.a of the Project.

14. Moreover, if the Agency for Administrative Modernization, IP, and the Institute of Financial Management and Justice Equipment, IP, are clearly subcontractors, the nature or function of eBUPi is not properly defined. It should be noted that, in clause 13.a of the Draft Protocol, that Mission Structure is assigned the quality of operational responsibility by BUPi. Since the person responsible for BUPi is the Instituto de Registos e Notariado, IP, under the terms of article 2 of Law no. since the protocol and the Resolution of the Council of Ministers

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that institutes it cannot depart from the provisions of the law. However, reasons of legal certainty recommend that this quality and its relationship with the data controller be clarified, from the perspective of the legal regime for the protection of personal data, as required by Article 28 of the GDPR.

ii. Other aspects of regime

15. With regard to the regulation of the security measures of the information system and the processing of personal data, paragraph 2 of Clause 4.a of the Draft Protocol stands out, which provides that the granting entities have registered users in a directory of users of the BUPi platform, with their own access profiles and with different permissions, which respect the

principle of the need to access information. In this regard, the CNPD also recommends the implementation of mechanisms that ensure the regular maintenance of these users (e.g., via alerts; automatic user deactivation, after a certain period of time without activity; supervision system).

16. A final note regarding the elements or attributes that can be used to perform the query on the BUPi, in accordance with paragraph 3 of clause 4.a of the Draft Protocol, because the "NIC" appears there, without any reference above and, above all, without the information relating to the civil identification number being part of the list of personal data collected under the terms of clause 2.a of the Project. The CNPD therefore recommends reconsidering the setting of this personal data as a query factor.

III. Conclusion

17. On the grounds set out above, the CNPD recommends densifying the provisions of the Draft Protocol that seek to implement the principles of protection of personal data, as explained above, in points 9 and 12 to 14.

18. It also recommends the densification and reweighting, respectively, of the provisions of paragraph 2 and paragraph 3 of clause 4.a, as suggested above, in points 15 and 16.

Approved at the meeting of January 19, 2021

Filipa Calvão (President)