

I. Request

1. The Permanent Specialized Committee on General Policy of the Legislative Assembly of the Autonomous Region of the Azores requested, on May 10, 2023, the National Data Protection Commission (CNPD) to issue an opinion on the Draft Regional Legislative Decree n.º 85/XII (PSD/CDS-PP/PPM), designated "Transparency Portal".

2. The CNPD issues an opinion within the scope of its attributions and competences as an independent administrative authority with authoritative powers for the control of the processing of personal data, conferred by articles 57, paragraph 1, letter cj; 58, paragraph 3, subparagraph b); 36, no. 4, all of Regulation (EU) 2016/679, of April 27, 2016 - General Regulation on Data Protection (hereinafter RGPD), in conjunction with the provisions of articles 3; 4th No. 2; 6, n.º 1, letter a), all of Law n.º 58/2019, of August 8, which implements the GDPR in the internal legal order (hereinafter LERGD).

3. The CNPD already had, through its Opinion 2023/39, issued on April 19, 2023, its assessment of the Draft Regional Legislative Decree n.º 87/XII (BE) which aims at the "Creation of the Nominations Portal on the Government of the Azores website".

4. The Constitution of the Republic establishes, under the terms of paragraph 6 of its article 231, that "It is the exclusive competence of the Regional Government in matters relating to its own organization and functioning", and for that reason, the organic of the Regional Governments and the offices of their members to appear in regional regulatory decrees.

5. In this sequence, Regional Regulatory Decree No. 18/99/A, of December 21st, established the composition, organization and regime of the offices of the President of the Regional Government of the Azores, the regional secretaries and the regional undersecretaries.

6. The present Draft Regional Legislative Decree n.º 85/XII (PSD/CDS-PP/PPM) (hereinafter Project), by creating the "Transparency Portal" within the scope of the Regional Government of the Azores, established a mechanism for publicizing the nominations for those who join the aforementioned offices.

7. The design of the Project foresees (8) articles, concerning its object (article 1), scope (article 2), operation (article 3), management (article 4), information to be publicized (Article 5), access to information (Article 6), transitional rule (Article 7) and

entry into force (Article 8).

II. Analysis

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8. Article 1 states that "The present diploma creates the Transparency Portal and establishes the rules applicable to the mandatory public disclosure, on the Regional Government's website, ([https://portal.azores.gov. pt](https://portal.azores.gov.pt)), the composition of the offices of the members of the Regional Government and the respective remuneration of the appointed personnel".

9. In article 2 it is stipulated that "the present diploma applies to the appointments of heads of cabinet, advisors, deputies, personal secretaries and specialized collaborators of the members of the Regional Government".

10. Further on in article 5, paragraph 1, the content of the information to be advertised is specified, which corresponds to the following: "a) Full name and respective function; b) Gross income, with indication of monthly remuneration and expenses representation; c) Approximate net income, corresponding, for reasons of protection of personal data, to the typical remuneration of a single person without children, to which the legal discounts provided for the purposes of Personal Income Tax and Social Security; d) Date of appointment; e) Hyperlink to the order of appointment published in the Official Journal".

11. In the same article 5, but in paragraph 2, the time for publication is regulated, that is, on the first working day after publication in the Official Journal and in the subsequent paragraph 3 the cancellation of information after publication. termination of their duties.

12. The object of this project coincides with the other project of regional legislative initiative to which we have already referred in the aforementioned Opinion No. 2023/39, for which reason we follow the same guidelines for this purpose.

13. In turn, the legislative strategy of this Project is similar to Article 18 of Decree-Law No. 11/2012, of January 20, which stipulates that "The Government publishes information on its website on all staff working in the offices, indicating the publication and content of the respective designation dispatches".

14. In compliance with the latter regulation, the website <https://www.portugal.gov.pt/pt/gc23/governo/nomeacoes> was created

at national level, where the entity that made the nomination, the function for which he was appointed/ a, the respective name, gross and net income earned, date of appointment and official publication, with a link to the respective order.

15. The disclosure of the identity, through the electronic site, of who and when was appointed to integrate the offices of the members of the Government of the Autonomous Region becomes a legal basis, obtaining consonance with the public interest of transparency and publicity of these appointments (cfr. Article 6(1)(e) and 6(3)(b) of the GDPR).

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16. However, the final body of paragraph 3 of article 6 of the RGPD states that "This legal basis may provide for specific provisions to adapt the application of the rules of this regulation, namely: the general conditions of lawfulness of processing by the controller; the types of data subject to processing; the data subjects in question; the entities to which personal data may be communicated and for what purposes; the limits to which the purposes of the treatment must comply; the deadlines for storage; and processing operations and procedures, including measures to ensure the lawfulness and fairness of processing, such as measures relating to other specific situations of processing in accordance with Chapter IX. Union or Member State law shall respond to an objective in the public interest and be proportionate to the legitimate objective pursued".

17. Thus, with regard to the management of the Transparency Portal provided for in article 4 of the Project, it is suggested that it be complemented with the duties of accuracy and updating of the respective personal data, as well as the duty to implement security measures that guarantee the integrity and availability of such personal data (cf. paragraphs d) and f) of paragraph 1 of article 5 of the RGPD)

18. Lastly, it should be noted that the limitation on data retention provided for in Article 5(3) of the Project is in line with Article 5(1)(e) of the RGPD.

III. Conclusion

19. Under the terms and on the grounds set out above, the CNPD recommends that the discipline of managing the Portal das Nominations be complemented with the duties of accuracy and updating of the respective personal data, as well as the implementation of security measures that guarantee the integrity and availability of such personal data.

Approved at the session of May 16, 2023

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