

National Data Protection Commission

OPINION/2022/109

I. Order

1. The Secretary of State for the Presidency of the Council of Ministers requested the National Data Protection Commission (CNPD) to issue an opinion on the Draft Decree-Law transposing Directive (EU) 2019/520, on the interoperability of systems electronic road toll systems - MIH - (Reg. DL 248/XXIII/2022).

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 c); 58, paragraph 3, subparagraph b); 36, no. 4, all of Regulation (EU) 2015/679, of April 27, 2016 - General Regulation on Data Protection (hereinafter RGPD), in conjunction with the provisions of articles 3; 4th No. 2; 6, n.° 1, letter a), all of Law n.° 58/2019, of August 8, which implements the GDPR in the internal legal order (hereinafter LERGD).

II. Analysis

3. Directive (EU) 2019/520 of the European Parliament and of the Council, of 19 March 2019, on the interoperability of electronic road toll systems and facilitating the cross-border exchange of information on non-payment of road fees in the Union , aims to promote the use of electronic road toll systems in the Member States and neighboring countries and contribute to a Union-wide road charging policy.

4. The proposed diploma revokes Law No. 30/2007, of August 6, which had transposed Directive 2004/52/EC of the European Parliament and of the Council, of April 29, 2004, meanwhile revoked by the aforementioned Directive (EU) 2019/520, with effect from 20 October 2021, without prejudice to the obligations of the Member States with regard to the deadline for transposition of the latter Directive into national law (Article 33 of the Directive (EU)) 2019/520).

5. The purpose of Directive (EU) 2019/520 is: a) To ensure the interoperability of electronic road toll systems on the Union's road network as a whole, urban and interurban motorways, main or secondary roads, and in various structures, such as tunnels or bridges, and ferries; and b) Facilitate the cross-border exchange of data on vehicle registration relating to vehicles and the owners or holders of vehicles for which there has been non-payment of any type of road fee in the Union (cf. article 1,

paragraph. 1).

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6. It further states that "The objective of interoperability of electronic road toll systems in the Union must be achieved through the European electronic toll service (SEEP), which must complement the national electronic toll services of the Member States" (cf. article 1, paragraph 4)

7. With regard to the protection of personal data and the corresponding treatment, the following normative segments stand out from this Directive (EU) 2019/520:

i) Article 5, regarding the rights and duties of SEEP providers, particularly regarding the secrecy of the data collected and respect for the purpose of their processing (No. 8, II part), with regard to the collection and processing of data data in accordance with GDPR and Directives 2002/58/EC and (EU) 2016/680 (No. 10)

ii) Article 6, relating to the rights and duties of toll collectors, more precisely in fulfilling the duties established for SEEP providers, in accordance with the previous article 5 (article 6, paragraph 3, part II)

iii) Article 21, through the existence of a national electronic register, leaving it to the Member States to ensure the up-to-dateness and accuracy of the data contained therein (paragraph 2) and the accessibility to the public by electronic means (paragraph 3)

iv) Article 23, the procedure for exchanging information on Member States

v) Article 27, data protection in accordance with the GDPR and Directives 2002/58/EC and (EU) 2016/680.

8. The proposed Decree-Law follows the objectives set out in Directive (EU) 2019/520 and in pursuit of the same establishes the national electronic toll service and the respective access regime (article 1 of the Draft Decree-Law, hereinafter Project), further optimizing the National Automatic Inspection Network (SINCRO), through the amendment to article 169.º, no. 8, of

Decree-Law no. 114/94, of May 3, commonly referred to as the Code of Estrada (penultimate recital of the Explanatory Memorandum; Article 52 of the Project).

9. The project rules with a potential immediate impact on the protection of individual personal data, with regard to the processing of personal data and the free movement of such data, are essentially centered on article 37, regarding the necessary information on the non-payment of toll fees, in article 38, headed information procedure between Member States, article 40, regarding the initiation of debt collection procedures, as well as in article 41, headed " Data Protection".

10. The data provided under the aforementioned article 40, paragraph 1 and in accordance with its paragraph 2, are "limited to those necessary to obtain the due toll fee" (paragraph a)) and " used exclusively

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for the purposes of obtaining the due toll fee and immediately erased once the toll fee has been paid or, if the non-payment continues, within a period of eight years after the transfer of the data" (paragraph ÖJ).

11. In turn, in the aforementioned article 41, it was recorded that the RGPD and Directives 2002/58/EC and (EU) 2016/680 are applicable to the processing of personal data under the project in question, listing and specifying that protection system.

12. Firstly, it should be noted that Articles 37 and 40 do not establish or regulate the respective channels or means of communication for obtaining that information, but should at least refer to their administrative regulations.

13. With regard to data retention periods, the aforementioned Directive adds in Article 27, paragraph 2, subparagraph c), "A period for the storage of personal data is set", and paragraph Article 25(2) determines that "Member States shall ensure that the data provided to the responsible entity are used exclusively for the purposes of obtaining the road fee due and are immediately erased once the road fee has been paid or, if non-payment continues , within a reasonable time after the transfer of the data, to be fixed by the Member State".

14. However, the RGPD, right in its recitals, states the need to ensure that the period of retention of data is limited to the minimum and fairness of its treatment (cf. recitals 39, 45), being lawful the extension of the period of retention of personal data when this proves to be necessary, among other cases, for the exercise of functions in the public interest (cf. recital 65, in fine),

enshrining in paragraph e) paragraph 1 of article 5, that the data Personal data are "Kept in a way that allows the identification of data subjects only for the period necessary for the purposes for which they are processed", with the exceptions of archiving provided for in article 89.

15. In these terms, we note that there is an imbalance between that deadline of 8 years provided for in article 40 of the Project and the option of the Directive for a reasonable period, not being presented, nor being able to intuit, any reason that justifies that option, so the deadline set out in the Project appears to be excessive. The CNPD recommends, therefore, its re-weighting

16. Finally, it is recommended that the terminology contained in the Draft Decree-Law (e.g., legal entity), maximum in Annex II, take into account the concepts used in the national legal system (e.g., natural person, legal person, etc.).

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III. Conclusion

17. Based on the reasons set out above, the CNPD recommends reviewing:

The. Articles 37 and 40, as they do not establish or regulate the channels or means of communication for obtaining personal data, at least providing for their administrative regulation;

B. From article 40, for reconsidering the period of 8 years for the conservation of data in case of non-payment of the due tolls, as it is excessive;

w. The terminology used (e.g., legal entity), maximum in Annex II, so that it conforms to the legal concepts consolidated in the national legal system (e.g., natural person, legal person, etc.).

Approved at the meeting of November 29, 2022

Filipa Calvao (President)