

National Data Protection Commission

OPINION/2023/55

## I. Order

1. The President of the Commission for Economy, Public Works, Planning and Housing of the Assembly of the Republic requested the National Commission for Data Protection (CNPd) to issue an opinion on Proposed Law No. 77/XV/1,a ( GOV), which "Authorizes the Government to proceed with the reform and simplification of licensing within the scope of urban planning and territorial organization" (hereinafter Proposal).

2. However, annexed to this Proposal is the so-called "Authorized Decree-Law", assuming the CNPD that with this incorporation an opinion on the latter is also issued, which we will do.

3. The CNPD issues an opinion within the scope of its attributions and competences, as an independent administrative authority with authoritative powers to control the processing of personal data, conferred by paragraph c) of paragraph 1 of article 57, paragraph b ) of paragraph 3 of article 58 and paragraph 4 of article 36, all of Regulation (EU) 2016/679, of April 27, 2016 - General Regulation on Data Protection (hereinafter GDPR) , 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 no. 58/2019, of 8 of August, which implements the GDPR in the internal legal order.

4. The present request was requested on May 25, 2023, for the issue of pronouncement until June 9, 2023.

5. The present proposal, as stated in its explanatory memorandum, is inserted "Within the framework of SIMPLEX", specifying that "the Program of the XXIII Constitutional Government elected as a priority the simplification of administrative activity through the continuous elimination of licenses, authorizations and unnecessary administrative acts, in a logic of «zero licensing». In the same sense, the objective was to eliminate disproportionate licenses, authorizations and administrative requirements that create context costs without having an effective added value for the public interest that is intended to be pursued.

6. It also mentions that "Despite all the efforts made and the progress made, Portugal still faces some challenges in its business environment, undermining the country's competitiveness and making it difficult to attract national and foreign

investment. One of the factors that contribute to this diagnosis are

## II. Analysis

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the excessive barriers in the licensing of economic activities that were pointed out in several analyzes by international institutions

7. Further on, it states that "The implementation of this SIMPLEX of administrative procedures and licensing for companies has already begun, with the approval of a set of simplification measures in the area of the environment and others of transversal application, through the Decree-Law No. 11/2023, of February 10. It is now time to continue the reform to simplify existing licensing, through the elimination of expendable or redundant licenses, authorizations, acts and procedures in terms of: i) urban planning; ii) planning of the territory; and iii) industry, simplifying the activities of companies."

8. Adding that "For this purpose, the Government submits the present proposal for a legislative authorization law which, within the framework of this package, aims to authorize the Government to legislate in matters of urban planning and land use. planning of the territory, there are areas that fall within the relative reserve of the Assembly of the Republic, it was understood that it would be appropriate to present a proposal for a law of legislative authorization."

9. Accordingly, the Proposal establishes its purpose (Article 1), listing the respective diplomas subject to legislative authorization, as well as their meaning and scope (Article 2).

10. At first reading, none of these laws has an immediate direct impact on the protection of personal data.

11. With regard to the "Authorized Decree-Law", its preamble continues the findings and purposes set out in the explanatory memorandum of the Proposal, specifying the following vectors: i) elimination of the need to obtain urban licenses; ii) simplification of administrative procedures for obtaining urban licenses or for carrying out prior communications through

various measures; iii) clarification of the municipalities' powers of cognition in the exercise of prior urban planning control, in particular with regard to the issuance of licenses; iv) elimination of certain excessive requirements in terms of prior urban planning control; v) implementation of measures aimed at simplifying the process of obtaining authorization for use; vi) simplification of processes regarding specialties in several dimensions; vii) simplification of processes for receiving urbanization works; viii) simplification of formalities related to the purchase and sale of property, eliminating formalities that do not represent added value.

12. Hence, its article 1, under the heading "Object", establishes in paragraph 1 that "This decree-law approves measures to promote housing and reduce charges and simplify administrative procedures on companies, ...", while number 2 identifies the diplomas that are going to be amended.

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13. Despite the terminology "reduce burdens and simplify administrative procedures for companies", previously mentioned in the projected norm-text contained in the "Authorized Decree-Law", the norm-context allows one to intuit that such administrative procedures also cover natural persons .

14. In turn, we find operational mechanisms that have an impact on natural persons and their personal data, such as the Electronic Platform for Urban Procedures, as well as the Public Administration Payment Platform, through amendments to the Legal Regime for Urbanization and of Building (hereinafter RJUE), both referenced in article 2 of the "Authorized Decree-Law".

15. The Electronic Platform for Urban Procedures (article 8.º-A of the RJUE) had been introduced by the original article 8.º-A, epigraphed "Computer System", through Law No. 60/2007, of 04 September.

16. The foreseen article 8,º-A, n.º 1 of the RJUE stipulates that "The processing of the procedures foreseen in the present diploma is obligatorily carried out in a dematerialized way, through the Electronic Platform of Urbanistic Procedures, under the terms to be regulated in an ordinance of the Government members responsible for the areas of administrative modernization, construction, local authorities and land use planning".

17. Accordingly, the legal design of this Electronic Platform of Urban Procedures has not yet been established, so it would be premature to establish a reasoned analysis on the same.

18. However, in the case of the enabling law of the future Ordinance, it would be advisable that the structuring and nuclear outline of the future Electronic Platform of Urbanistic Procedures had been established.

19. But focusing expectations on the future Ordinance, it should pay special attention to the principles of data protection by design and by default, provided for in article 25 of the RGPD. Since the intention is to create a platform from scratch, it will be the opportunity to foresee in its technological design the necessary safeguard mechanisms to guarantee that the processing of personal data, in its diversity of operations, comply with the principles that apply to them, namely as regards the minimization of data, conservation periods, access control, security measures that ensure data integrity and confidentiality.

20. In turn, the aforementioned Public Administration Payments Platform (item I) of paragraph 1 of article 1 of the RJUE) had already been provided for by Decree-Law No. 135/99, of 22 April, which came to implement administrative modernization measures, amended by Decree-Law No. 73/2014, of May 13, establishing in Article 30 - designated "Automatic means of payment" - No. 4 that "Payment for public services

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provided by electronic means must preferably be carried out through the Public Administration Payments Platform (PPAP)".

21. As the payment for public services whose information is provided electronically is at stake, this mechanism must be subject to robust security and data protection measures, both for natural persons and for public authorities, in accordance with the principles of data integrity and confidentiality set out in Articles 5, paragraph 1, paragraph f), paragraph 2 and 32, both of the RGPD - cfr. also recitals (7), (39), (49), (83) of the preamble and article 4, paragraph 12) also of the RGPD.

### III. Conclusions

22. Under the terms and on the grounds set out above, the CNPD issues this opinion, in which it recommends that:

The. The authorized Decree-Law establishes the structuring and core outline of the future Electronic Platform of Urban Procedures, foreseen in article 8.º-A, n.º 1 of the RJUE.

B. The future regulatory ordinance of this Electronic Platform of Urban Procedures takes into account the RGPD with regard to the protection of personal data, in particular the observance of the principles of data protection from conception and data

protection by default;

w. The Public Administration Payments Platform is equipped with robust security and data protection measures.

Approved at the meeting of June 6, 2023

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Paula Meira LourençofPresident)