

I. Order

1. The Budget and Finance Committee of the Assembly of the Republic asked the National Data Protection Commission (CNPd) to issue an opinion on Bill No. 781/XIV/2.3 (PS), which “Approves a regime of prevention of unauthorized financial activity with a view to protecting consumer rights’.

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, all of Law No. 58/2019, of 8 December August, which enforces the GDPR in the domestic legal order.

II. Analysis

3. The purpose of this Bill of Law is to establish a complementary framework for consumer protection in the face of the offer of financial products or services by a person or entity not authorized to carry out this activity, also amending the legal diploma relating to the National Council of Financial Supervisors .

4. With direct relevance to the protection of personal data, it is important to highlight that the Bill of Law imposes on different professional categories the duty to denounce, to the competent administrative supervisory entities, the specific situations that they come across of apparent or evident financial activity not authorized (cf. Articles 4 and 5 and, in terms of general duty, Article 3). Such a complaint may imply the communication of personal data, which, taking into account the purpose of the Project, does not give rise to any reservation from the perspective of the personal data protection regime.

5. On the other hand, the provision for publicity of sentencing decisions made by supervisory or judicial entities contained in article 11 of the Draft Law, in the same perspective, needs to be revised in some aspects.

6. In fact, if it is perceived that advertising has, in this context, a direct effect of promoting consumer protection, warning them about future financial interactions with the condemned legal subjects, it cannot be ignored that such advertising has to be done in a way that respects the principles of proportionality and minimization of personal data, also enshrined in Article 5(1)(c) of the

GDPR. To that extent, the full disclosure of decisions is clearly unnecessary if, in this way, it results in the disclosure of personal data not necessary for the purpose underlying the advertising, in particular

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of natural persons involved in the transaction but which do not correspond to the person who illicitly carried out the financial activity. Therefore, it is suggested that the wording of paragraph 1 of article 11 of the Bill be revised, in order to guarantee respect for the aforementioned principles.

7. In addition, the CNPD maintains the reservations it has always expressed with regard to draft diplomas that require the publication of administrative or judicial convictions that have not yet become final, also due to the fact that this information is often indexed to search engines, allowing the collection of information by companies that are dedicated to creating profiles of people¹, who are definitively and irremediably marked by a stigmatizing and potentially discriminatory effect even if, in the appeal of the conviction decision, those are exonerated, without guaranteeing updating the information on the disclosure page of these decisions and, above all, with all those who in the meantime have processed this data.

8. For this reason, the CNPD, in addition to recommending the reconsideration of this solution expressly provided for in paragraph 3 of article 11 and not excluded in paragraph 1 of the same article, considers it essential, for the protection of the rights of individuals sentenced, provided for in this article, possibly in paragraph 2, the duty to indicate, with the same visibility as the rest of the information, whether the decision is being challenged administratively or judicially, as well as whether a final decision has been issued in the meantime or higher in a different sense - by virtue of the principle of data accuracy, enshrined in Article 5(1)(d) of the GDPR.

9. Finally, a word for the accessory sanction provided for in paragraph 3 of article 12 of the Bill. It is not clear whether this warning is a plus in relation to the publicity of convictions, from the perspective of the CNPD - within the scope of its attribution

- this is a sanction that seems unnecessary, taking into account the publicity already ensured by the duty established in article 11 .° of the Project, appearing to be in contradiction with the principle of proportionality. The CNPD therefore recommends, taking into account that the publicity of convictions already materially has this accessory sanctioning effect, that the autonomous provision of the warning accessory sanction be reconsidered.

10. In any case, and on the grounds set out above in point 7, it is always added that, if the public register of alerts of unauthorized financial activity referred to in paragraph 2 of article 6 of the Draft Law has in view the warning sanction provided for in paragraph 3 of article 12, and not just warnings of a generic nature, it is important to ensure the duty to update the information made available, registering there if the decision is

1 Here, taking into account the scope of the CNPD's attribution, only relevant to natural persons, but in fact the same judgment applies to legal persons.

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be object of administrative or judicial challenge and, above all, making public, in the same register, any superior decision of a different meaning.

III. Conclusion

11. On the above grounds, the CNPD recommends

The. The reconsideration of publicity solutions for convictions, at least while they are not final or final, alerting to the risks of reusing that information with high discriminatory potential that the Internet context promotes;

B. If the legislative option of publicizing it is maintained, either under the terms of article 11 or of paragraph 2 of article 6, the revision:

i) Article 11(1), in order to ensure that any publicity of a full decision is preceded by a process of anonymization of personal data not relevant to the fulfillment of the purpose underlying such publicity and that, strictly speaking, if it complies with the elements contained in paragraph 2 of article 11;

ii) The duty to update the information published under the terms of article 11 and paragraph 2 of article 6, immediately indicating, with the same visibility, whether the decision is being challenged administratively or judicial and, above all, making

public any final or superior decision of a different meaning;

iii) From paragraph 3 of article 12, in the sense of eliminating the autonomous provision of the accessory sanction of warning, since the publicity of sentencing decisions already materially has this sanctioning effect.

Lisbon, May 17, 2021

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