

I. Request

1. The Secretary of State for the Presidency of the Council of Ministers asked the National Commission for Data Protection (CNPd) to pronounce on the Draft Decree-Law that aims to approve the Legal Regime of Land Registry (RJCP), establish the National System of Cadastral Information (SNIC) and the Cadastral Letter as a single and universal registration of properties in the land cadastre regime (Reg. DL 420/XXIII/2022).

2. The CNPD issues an opinion within the scope of its attributions and powers 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, in conjunction with paragraph b) paragraph 3 of article 58, and with 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, Article 4(2) and Article 6(1)(a), all of Law No. 58/2019, of August 8, which implements the GDPR in the internal legal order.

II. appreciation

3. Through Council of Ministers Resolution No. 45-A/2020, of June 16, the National Plan for Integrated Management of Rural Fires was approved, which establishes, among others, the objective of implementing programs aimed at knowledge about the location, boundaries and ownership of rustic and mixed properties, and about properties with no known owner, within the scope of simplified cadastral information and land registration. And in implementation of this, the National Action Plan, approved by Resolution of the Council of Ministers n.º 71-A/2021, of June 8, includes concrete measures such as the approval of the new legal regime of the land register, articulated with the regime of the simplified cadastral information system, developing the national property cadastre system. At the same time, the Recovery and Resilience Plan (PRR) provides for the Reform «Reorganization of the rural property registration system and the Soil Occupation Monitoring System (SMOS)», included in component «C8 - Forests», which establishes the framework necessary legal framework to operationalize the investment «RE-C08-Í02: Rural property registration and Land Occupation Monitoring system», contemplating, among other

diplomas, the publication of a diploma approving the new Land Registry Legal Regime (RJCP).

4. Under the terms of the preamble, it is necessary to create a legal regime for the new land registry and establish a national cadastral information system that ensures the integration of all information related to land ownership based on the land registry, allowing the availability of data of identification, of characterization of the properties, in articulation with the land register and with the matrix inscription.

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5. Thus, the bill of decree-law approves the legal regime of land cadastre, establishes the National Cadastral Information System (SNIC) and the Cadastral Charter as the single and universal register of buildings under the land cadastre regime. It also proceeds with the first amendment of Law No. 3/2015, of January 9, which regulates the regime of access and exercise of the professional activity of land registration, in accordance with the discipline of Law No. 9/2009, of March 4, and Decree-Law No. 92/2010, of July 26, which transposed Directives No. 2005/36/EC, on the recognition of professional qualifications, and 2006/123/EC, concerning services in the internal market.

6. Under the terms of article 4 of the Draft Decree-Law, the General Directorate of the Territory (DGT) is the National Land Registry Authority, and it is incumbent upon it to ensure the application of the legal regime for land cadastre established by this decree-law and the coordination of interventions in terms of land registration. Among the various competences attributed to it, the most important is to promote the application of the legal regime of land cadastre, in articulation with the legal regime of the simplified cadastral information system (paragraph

B); develop, coordinate and manage the SNIC, ensuring interoperability with the single portal for public services and with the Balcão Único do Prédio (BUPi), provided for in the regime of the simplified cadastral information system; Ensure the Land

Registry Technician (TCP) registration and enrollment system and keep the respective official list permanently updated (paragraph e); ensure, within the scope of the SNIC, the registration and authentication of registration holders and their legal representatives, as well as the registration, authentication and accreditation of TCP, and access to the respective personal data (paragraph g).

7. Article 7, in turn, provides that the National Cadastral Information System (SNIC) integrates all information relating to the land registry, identifies and makes available the characterization and identification data of the properties inscribed in the Cadastral Letter and ensures the management and conservation of the land register, integrating information regarding ownership and other real rights over registered properties and respective holders, under the responsibility of IRN, I.P., for interoperability through BUPi, as well as information regarding the attribute of the taxable value of registered properties, the responsibility of AT, for interoperability through BUPi.

8. The Project contemplates the processing of personal data of the cadastral holders, of the representative of the cadastral holder, of the holders of the neighboring buildings and of the land registry technicians. It also includes the processing of identification data of employees, agents, and users who access information relating to documentation and information contained in the SNIC. As the Project provides for the provision of electronic payment methods, without, however, specifying them, bank data may eventually be processed.

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9. It is important, first of all, to note that the present draft Decree-Law is not supported by an impact study on the protection of personal data - which is, remember, mandatory under the terms of paragraph 4 of article 18 of Law No. 43/2004, of August 18, amended by Law No. 58/2019, of August 8. The absence of the aforementioned impact study compromises a more complete assessment of the likely risks arising from the processing of personal data.

10. Analyzing the draft Decree-Law from the point of view of its compliance with the legal regime for the protection of personal data, it is important to note that article 36 lists the personal data of the cadastral holder that are likely to be subject to treatment: Cardholder Name; holder's tax identification number; domicile of the holder by reference to the place of habitual

residence with indication of the postal address; email address, as well as telephone contact; whereas paragraph 3 states that other data or documents necessary for the proper conduct of the procedure may be collected. In situations of community or co-ownership of buildings, the data of all co-holders or co-owners are collected. In the case of a representative of the cadastral holder, the representative's identification data must also be collected, namely the respective name, tax identification number and usual address.

11. The data in question are adequate, relevant and limited to what is necessary for the pursuit of the intended purpose, insofar as the identification of the respective owner is essential for the identification of the buildings, and the NIF is here the personal data that allows to ensure the linking existing information in land registers with information on assets available to the Tax and Customs Authority. Thus, the principle of data minimization provided for in Article 5(1)(c) of the RGPD is considered fulfilled. Exceptions are made for references to other data or documents necessary for the proper instruction of the procedure, the need for which, due to lack of specification, it is not possible for the CNPD to assess.

12. With regard to the representative of the cadastral holder, it is suggested that the adverb be removed, namely from paragraph 5 of article 36, so that the categories of personal data to be processed are not merely illustrative, with the diploma precisely define the terms under which the processing can be carried out. Otherwise, under these open terms, the CNPD cannot conclude that the data to be processed is proportional, as compliance with the provisions of Article 5(1)(c) of the RGPD is not ensured.

13. Pursuant to article 8, within the scope of the SNIC, the functionalities of access to the registration and secure electronic authentication of CCDR technicians to exercise the powers provided for in this draft decree-law (paragraph d)) and access registration and secure electronic authentication of registration holders and their legal representatives, as well as registration, authentication and accreditation of TCP (paragraph e). It is recalled that in Resolution of the Council of Ministers No. 41/2018, of March 28, it is recommended to use the word-

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pass, preferably in combination with another factor (2FA). It should be noted that the listed user profiles do not refer to the platform administrator profile, for which and in accordance with the same Resolution, the 2FA mechanism is mandatory.

14. In turn, paragraph m) of paragraph 1 of article 8 states that within the scope of the SNIC, the provision of electronic payments will be ensured, among other features, without, however, specifying the means by which these payments will be processed. In the absence of an impact study on the protection of personal data that assesses the risks of such operations, the pronouncement on this treatment is once again impaired. However, we are alert to the special sensitivity of the data in question, the violation of which is likely to entail a high risk for the rights and freedoms of natural persons.

15. On the other hand, paragraph 2 of article 8 of the Project refers to notifications and electronic communications within the scope of the procedures established in this Draft Decree-Law. It is recommended to consider technical and organizational measures capable of preventing the sending of personal data, by mistake, to unintended recipients.

16. It is now important to analyze article 10 of the Project regarding the use of electronic and computer means. Paragraph 1 provides that, within the scope of the SNIC, electronic and computerized means must be used to guarantee the authenticity, integrity and confidentiality of the respective information and documentation, ensuring, in particular, the creation, alteration and elimination of data, the registration of queries and delimitation of the universe of database users. The CNPD observes that, in addition to those three principles set out, it remains to be foreseen that the IT means must also guarantee the availability of the data.

17. Still under the terms of the same article, the use of electronic and computer means must ensure, among other functionalities, the registration of consultations. Therefore, it is important to define the record retention period for the purpose of auditing the use of the system, and such records must be made not only for queries, but also for data creation, alteration and deletion operations.

18. In turn, paragraph 4 of this article provides that electronic identification within the scope of the SNIC must be made through the use of electronic authentication means with a citizen card or Digital Mobile Key, as well as electronic identification means issued in other Member States recognized for that purpose under Article 6 of Regulation (EU) No 910/2014 of the European

Parliament and of the Council.

19. In this regard, the CNPD draws attention to the fact that the authentication mechanisms for CCDR technicians must be made available by the respective public entities, underlining the importance of ensuring that such mechanisms do not contravene the provisions of national law, in particular the with regard to the use of the citizen's card as a means of such access.

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20. In fact, article 1S.º-A of Law no. 7/2007, of February 5, last amended by Law no. 32/2017, of June 1, admits that the citizen's card serves as a way of certifying a certain professional attribute, but this can only occur, under the terms of the same legal precept, by the will of the citizen himself, which implies conditions for the development of the professional activity that guarantee the freedom of expression of such will. However, in the context of hierarchically dependent labor relations, such as those that characterize Public Administration, such a manifestation of will is hardly free, so that its use may constitute a violation of the provisions of the aforementioned article 18.º-A of Law no. 7/2007, therefore, it is essential to guarantee an alternative means of authentication.

21. In turn, article 76 regulates the right to information provided for in articles 13 and 14 of the RGPD, limiting itself to mentioning that any person has the right to be informed about the personal data concerning, as well as the identity and address of the entity responsible for the treatment and conservation of personal data relating to registered buildings and other information provided for in articles 13 and 14 of the RGPD. It is recommended that this article be reformulated in order to clarify who is the public entity responsible for guaranteeing this right.

22. Finally, paragraph 2 of the aforementioned article 76 provides that «The legal regime relating to the protection of personal data that results from Law no. 26/2016, of August 22, in its current wording, and the RGPD. 3 - The provisions of the preceding paragraph do not affect the sharing of information under the terms of the duty of collaboration provided for in paragraph 3 of article 9». Now, Law No. 26/2016, of August 22nd, regulates access to administrative documents, providing in Article 5(1) that everyone, without the need to state any interest, has the right of access to administrative documents , which includes the rights

of consultation, reproduction and information about its existence and content.

23. However, paragraph 5 of article 6 regulates access by a third party to nominative documents (document containing personal data, within the meaning of the legal regime for the protection of natural persons) making this right of access dependent on written authorization of the data subject "or if it demonstrates that it has a sufficiently relevant direct, personal, legitimate and constitutionally protected interest, after considering, within the framework of the principle of proportionality, all the fundamental rights in question and the principle of open administration, which justify access to the information'.

24. However, the right of access by third parties to administrative documents, including nominative documents, is not to be confused with the right of access of data subjects provided for in article 15 of the RGPD, therefore,

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since it is not clear what the right of access is intended to be foreseen here, it is recommended that the number be clarified 2 of article 76 of the Project.

III. Conclusion

25. Under the terms and grounds set out above, the CNPD recommends:

- a) The elimination of the adverb, namely from paragraph 5 of article 36;
- b) The reformulation of article 8 in order to provide for the use of a password in combination with another factor (2FA) for secure electronic authentication;
- c) The consideration of technical and organizational measures in notifications and electronic communications within the scope of the procedures established in this decree-law to prevent personal data from being sent, by mistake, to unintended recipients;

- d) That in paragraph 1 of article 10 it is contemplated that the computer means should also guarantee the availability of data and that the period for retaining records be defined for the purposes of auditing the use of the system;
- e) That the use of means of electronic authentication with citizen card for the electronic identification of CCDRs technicians be reconsidered or, at least, that the obligation to guarantee an alternative to its use be foreseen; It is
- f) Clarification of Article 76(2) under the terms set out above.

Lisbon, March 22, 2023

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