

I. ORDER

OPINION/2020/46

The Regulatory Entity for the Media (ERC) requested an opinion from the National Data Protection Commission (CNPD) on the project to review the ERC Regulation No. 348/2016, of April 1, adopted on March 4, 2020, and which lays down the rules on the transparency of the main means of financing and on the annual corporate governance report of the entities that social communication activities continue.

The CNPD issues an opinion within the scope of its attributions and powers as independent administrative authority with powers of supervisory authority of the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57, in conjunction with subparagraph b) of 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, in paragraph 2 of article 4, and in subparagraph a) of paragraph 1 of article 6, all of Law n.º 58/2019, of 8 August, which implements the GDPR in the domestic legal order.

II. ASSESSMENT

This Regulation review project aims to comply with the provisions of articles 5 and 16 of Law no. 78/2015, of 29 July, which imposes on entities that develop the social communication activity the obligation to communicate a set of information to the ERC for the purpose of promoting transparency of ownership, management and the means of financing them.

According to the aforementioned legal framework, it is up to the ERC to define the nature of the data to be communicated as well as the frequency of such communication. taking into account that, under the terms of article 2 and 5 of the aforementioned law, entities subject to the obligation to

communication of data relating to financial flows may correspond not to only to legal persons but also to natural persons and that the information communicated by legal persons, as well as the information to be included in the report annual corporate governance, may concern natural persons, in question is the provision of communication and disclosure of personal data (cf. article 4, paragraph 1), of the GDPR). It is only with regard to these that the CNPD pronounces itself, starting from the established in articles 3 and 16 of Law no. 78/2015, of 29 July, the types of information that must be communicated to the ERC.

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1. The personal data subject to communication, provided for in paragraph 1 of article 3 of the Project, prove to be adequate and relevant for the purpose of promoting transparency regarding the financial flows of the entities covered, respecting the principle of data minimization enshrined in subparagraph c) of paragraph 1 of article 5 of the GDPR.

Still in the same article, it is foreseen the communication of the list of natural persons or companies that represent more than 10% of total income, as well as those that represent more than 10% of the sum of the total amount of liabilities, in both cases with information regarding their identification and the percentage and headings to which referred to (cf. subparagraphs a) and b) of paragraph 2 of article 3). This prediction makes the imposition of communication established in paragraph 3 of article 5 of Law n.º 78/2015, of 29 December July, where it is established that the reporting obligation covers "the list of individual or legal persons who have, by any means, individually contributed at least more than 10 /prct. for the income calculated in the accounts of each of those entities or that are holders of credits susceptible of giving them a relevant influence over the company, under the terms to be

defined in the ERC regulation.' For this purpose, the universe of natural persons thus delimited in subparagraph b) of paragraph 2 of article 3 of the Project, as well as the categories of personal data set, also appearing to be appropriate and relevant to the intended purpose.

2. With regard to information, relating to natural persons, to be included in the annual report of legal persons in the corporate form, highlights above all the provided for in paragraphs 1 to 3 of article 5 of the Draft revision. at stake is the identification of the officers of the governing bodies and the description of the respective activities parallel professionals which includes name, function, biographical note with information of a professional and academic nature, as well as the annual and individual remuneration of the same. Also when editorial managers are expected, in addition to their identification, the biographical note with information of a professional and academic nature and paid parallel activities. With a view to guaranteeing freedom of press and independence from the influence of political and economic powers, which this legal regime envisages (cf. no. 1 of article 1 of Law no. 78/2015, of 29 July), also the set of personal data indicated proves to be adequate for the purpose sight.

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However, in the revision project, it is still foreseen the communication of the amount of the individualized (annual) remuneration of the officers of the governing bodies. The communication of this personal data is not imposed by Law No. 78/2015, nor is its indispensability for the purposes envisaged by the legal regime of transparency.

And although the ERC deems it appropriate and necessary to know this information to be able to exercise the powers conferred by the aforementioned legal diploma, there does not seem to be any basis for its publicity on the electronic platform, due to the consideration of the

impact that the availability of this type of information on the Internet has on the privacy of data subjects.

Thus, in light of the principles of proportionality and data minimization, enshrined in Article 5(1)(c) of the GDPR, the CNPD recommends that respond to the requirement to collect and, in particular, make available to the public the information regarding the amount of individualized (annual) remuneration of the holders of social bodies. At the very least, that measures are taken to mitigate the impact on privacy (e.g., through the de-indexing of search engines).

It also takes the opportunity to point out that, in paragraph 10 of article 5, the ERC substantiates the principle of minimization of personal data, by determining that "avoidance the insertion of unsolicited or necessary personal data to fulfill the this Regulation'.

3. Finally, article 8 regulates the public availability of information, in compliance with the provisions of paragraphs 1 and 2 of article 6 of Law n.º 78/2015, of 29 December July. This provision may not cover all the data communicated, as noted in the final part of paragraph 1 of article 6. In fact, attributing the law to the ERC the determination of situations in which fundamental interests of interested parties justify exceptions to this principle of publicity, it is established in no. 1 of article 8 of the Project that entities may request the application of the exception to some data, given the sensitivity and potential confidentiality of the data.

Understanding the use of imprecise concepts to characterize in the standard regulate situations in which it may be justified to withdraw advertising from the information, the CNPD only points out that it is not very clear what the "potential confidential nature" of data. Indeed, it is up to the requesting entities to substantiate

because they understand that the data are confidential and it will be up to the ERC to assess whether

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must recognize such a nature, appearing to be

inappropriate to claim

presupposition of the decision the potential character. The CNPD therefore suggests eliminating

of the potential adjective in paragraph 1 of article 8 of the Project.

Still in the same article, the wording of paragraph 3, when it states that "will be referenced

the elements that were the subject of a request for non-public availability», leaves

a doubt. If the public reference of the data that was the subject of

request of non-public availability in cases where the request was

deferred, more noticeable would be to indicate the referencing of the data category. To

on the contrary, if the public reference of the data that were the subject of

request of non-public availability in cases where the request was

rejected, the purpose of the rule is not achieved.

III. CONCLUSION

In general, the draft regulatory review under consideration does not present

nonconformities in relation to the legal data protection regime, with the exception of the

forecast collection and availability to the public of information on the amount

of the individualized (annual) remuneration of the holders of the governing bodies, which, in

perspective of the CNPD, does not comply with the principles of proportionality and

minimization of personal data.

To that extent, the CNPD recommends that the ERC respond to this requirement or, at the very least,

least, consider adopting appropriate measures to mitigate the impact on the

privacy of data subjects.

Furthermore, only occasional wording suggestions are left regarding article 8 of

to make it more noticeable.

Lisbon, April 17, 2020

Filipa Calvão (President, who reported)

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