

NATIONAL COMMISSION ®“ DATA PROTECTION

OPINION No. 15/2018

I. Order

The Office of the Secretary of State for Justice sent the National Data Protection Commission (CNPd), for an opinion, the Draft Decree-Law amending the legal regime of the National Register of Legal Persons approved by Decree-Law No. 129/ 98, of May 13, amended by Decree-Laws No. 111/2005, of July 8, 76-A/2006, of March 29, 125/2006, of June 29, 8/2007, of January 17, 247-B/2008, of December 30, 122/2009, of May 21, by Law No. 29/2009, of June 29, by Decree-Laws No. 250/2012, of 23 November and 201/2015, of 17 September and by Law No. 89/2017, of 21 August.

The Commission called upon to express its opinion, issues an opinion under the terms and for the purposes of article 23, no. 1, subparagraph a), of Law no. by Law No. 103/2015, of August 24th.

II. Of Appreciation

According to the preamble of the draft diploma under analysis, it is intended to create a measure within the scope of the simpix+ national program that consists of the creation of a permanent certificate of «acts and facts relating to legal persons registered in the Central File of Collective Persons (FCPC) ) (...)» in order to "(...) permit the exemption of the request by certain entities of a certificate on paper proving the registration of a legal person in that Registry, namely for the purposes of public tenders for supply and service contracts », electronically making the aforementioned permanent certificate available. In this sense, the legislator begins by proposing an amendment to article 21 of Decree-Law no. 0 129/98, of 13 May, whose title is «Functions and data updates», from which stems the possibility of being provided «to any person» who requires «basic information» on the entities referred to in points a), b) and e) of no. 1 article 4 of the same legal diploma.

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From the outset, doubts arise as to which data fall under the expression “basic information”, since the diploma is silent as to its meaning.

We verified that the expression appears in several articles of the diploma that is now intended to be amended, so we suggest that it be implemented, namely by referring to the relevant provisions of the Decree-Law which is the object of amendment.

The present proposal for a diploma is also intended to add an article 22-A to Decree-Law No. 129/98, entitled "permanent certificate".

From the text of the rule, it appears that a "permanent certificate" will be made available on the website, whose information contained therein "(...) proves, for all legal purposes and before any public or private entity, the acts and facts relating to the entity that concerning', '(...) in the same terms as the corresponding paper version' (cf. nos. 1 to 3).

The information to be made available electronically concerns legal persons, in view of the provisions of subparagraphs a), b) and e) of paragraph 1 of article 4 of Decree-Law no. the terms and conditions of the application and the availability of the "permanent certificate". However, since it is not known what information will be included in the aforementioned «permanent certificate», but it is known that «personal data» is processed in the FCPC - Article 21-A - it is necessary to pronounce the CNPD in the opinion within the scope of the ordinance approval procedure (cf. article 22, no. 1, of the LPDP).

This is our opinion.

Lisbon, April 17, 2018