

NATIONAL DATA PROTECTION COMMISSION

OPINION/2019/3

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 that regulates the registration of foundations provided for in Article 8 of Law No. 24/2012, of July 9, (Framework Law on Foundations), amended and republished by Law No. 150/2015, of September 10. Such registration is mandatory, contains identification elements of the entities with a view to publicizing their legal situation and is implemented among public services from the registration in the Central File of Collective Persons.

The request made and the opinion issued now derive from the attributions and powers of the CNPD, as an independent administrative entity with powers of authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and by the no. 4 of article 36, of Regulation (EU) 2016/679, of 27 April 2016 (General Data Protection Regulation - RGPD), in conjunction with the provisions of no.

1 of article 21 and paragraph 1 of article 22, both of Law no. 67/98, of 26 October, amended by Law no. 103/2015, of 24 August (Law of Personal Data Protection - LPDP).

The assessment of the CNPD in this opinion is restricted to aspects of the regime relating to the processing of personal data, that is, operations that focus on information concerning natural, identified or identifiable persons - cf. Article 4(a) and b) of the GDPR.

II. appreciation

The Framework Law on Foundations establishes that Portuguese and foreign foundations that carry out their purposes in national territory are subject to registration. It also provides that this register should be included in a single database, maintained and made available for public consultation by the Instituto do Registo e Notariado, i.P. (IRN, I.P.).

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The present Draft Decree-Law aims to regulate the registration of foundations, also providing for "the registration of accountability, carried out through the Simplified Business Information, as well as the publication of most registration acts on the publication's website, under the terms provided for commercial companies'. The diploma under analysis also adds article 27-C to Decree-Law no. 110/2017, of December 15th.

Regarding the protection of personal data, the Draft Decree-Law contains some relevant provisions regarding the data of the members of the bodies of foundations, their voluntary representatives, the representatives of foundations of law with permanent representation in the national territory, as well as the liquidators and of the judicial administrator and of the temporary insolvency judicial administrator and of the interim judicial administrator in a Special Revitalization Process (cf. subparagraphs e), f) and j) of article 2, subparagraph b) of article 3 and subparagraphs j) and n) of article 4 of the Regime for the Registration of Foundations, published as an annex to the diploma).

The Draft Decree-Law determines that the appointment, renewal and termination of duties of the members of the management body, the directive or executive body and the supervisory body are subject to registration (which is carried out "on the basis of the minutes proving the deliberation of appointment or reappointment and in a document proving the acceptance thereof by the appointed or reappointed members', under the terms of article 13), of the representative, as well as the alteration of the respective powers of foundations of law with permanent representation in national territory, the appointment and termination of functions, prior to the closing of the liquidation, of the judicial administrator and of the provisional insolvency judicial administrator as well as of the interim judicial administrator in a Special Revitalization Process and also the mandate given to the voluntary representatives, its modification, renewal and extinction, the sub-establishment of conferred powers and their amendment. „

It should be noted that, under the terms of article 21, the registry service must communicate electronically to the competent services of the tax and social security administration the content of the registration acts concerning the appointment and termination of functions, for any reason that other than the passage of time, members of foundation bodies and representatives

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j NATIONAL COMMISSION

DATA PROTECTION

NATIONAL COMMISSION

permanent positions of foundations governed by foreign law, as well as the powers of the latter, the appointment and termination of functions of the liquidators of the foundations and also the appointment of the judicial administrator and the provisional insolvency judicial administrator - cfr. article 21 no. 1 c) g) h).

These precepts aim at the processing of personal data under the terms of article 4, points 1) and 2) of the RGPD, so it is important to analyze whether they comply with the provisions set out therein.

The Draft Decree-Law does not enshrine any provision directly regulating the processing of personal data provided for therein, opting to refer such processing to the regime provided for in articles 78-B to 78-I of the Commercial Registration Code. In these terms, the General Director of Registries and Notaries will be responsible for processing the database, and it is his responsibility to "ensure the right of information and access to data by the respective holders, the correction of inaccuracies, the completion of omissions and the suppression of improperly recorded data, as well as ensuring the legality of the consultation or communication of information". It should be noted that the Commercial Registration Code also calls for the legal regime enshrined in the LPDP, and the RGPD has been in force since May 25, 2018, establishing a more demanding regime in terms of safeguarding the rights of data subjects.

It is therefore recommended that an express reference be made to the legal regime of data protection enshrined in the RGPD, thus safeguarding the rights of information, access and rectification of data subjects under the terms provided for in articles 14 to 16 of the RGPD.

As a final note, article 22 of the Draft Decree-Law provides that access to the data contained in the register of foundations will be provided to the General Secretariat of the Presidency of the Council of Ministers and to the General Inspectorate of Finance, and a protocol must be signed with the IRN, ÍP, the copy of which will be sent to the CNPD.

Therefore, this Commission reserves any observations on the protocol for a later time, pursuant to Article 58(3)(b) of the GDPR.

Lisbon, February 5, 2019

Filipa Calvão (President)

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