

I. Order

1. The Assistant Secretary of State and Education asked the National Data Protection Commission (CNPD) to issue an opinion on the joint Ordinance Project of the Assistant Secretary of State and Education and the Assistant Secretary of State for Work and Training Professional, who approves models of diplomas and certificates in electronic format.

2. The CNPD issues an opinion within the scope of its attributions 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 of August, which implements the GDPR in the domestic legal order.

II. Analysis

3. Decree-Law No. 54/2018 of 6 July, which establishes the legal framework for inclusive education, provides that at the end of their school career, students are entitled to the issuance of a certificate and a completion diploma of compulsory schooling.

4. The same right is established in Decree-Law No. 55/2018, of 6 July, in its current version, for students who complete basic and secondary education in the various offers and modalities of the education and training system, expressly stating that diplomas and certificates are issued, as a rule, in electronic format.

5. In turn, Decree-Law No. 396/2007, of 31 December, which establishes the legal framework for the National Qualifications System (SNQ) and creates the National Qualifications Framework (QNQ), provides that the conclusion , with success, of one or more training units developed based on the references of the National Qualifications Catalog (CNQ) is proven through a qualification certificate.

6. The Draft Ordinance submitted to the CNPD (hereinafter, Project) aims to regulate the models of diplomas and certificates provided for in those diplomas in relation to educational and training offers within the scope of compulsory education and, also,

as explained in its preamble, " dematerialize, standardize, gather and regulate, in a single diploma, the models of diplomas and certificates existing in the various educational and training offers".

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7. The issuance of the diplomas and certificates in question implies access to students' personal data and their transmission between services of the Ministry of Education (schools, Directorate-General for Education and Science Statistics), private schools and cooperatives, as well as schools from other ministries with educational and training offers within the scope of compulsory education (such as the schools of Casa Pia and Turismo de Portugal and the Instituto Português do Desporto e Juventude, I. P..

8. According to the Project, the diplomas, certificate and certificate of qualifications for basic and secondary education (arts. 7 to 12) and for courses with extinct study plans (art. 14) present a common core of personal data and which are basically the identification of the issuing entity; the identity of the certificate holder, with reference to the full name, date of birth, identification document and respective number; the identification of the qualification in question or the educational and training offer and the course/course completed, as well as the identification of the representation of peers and participation in activities and projects, the identification number of the Youth Pass issued by the Portuguese Institute of Sport and Youth , I.P. and the book we hold.

9. Other data are processed, depending on the specificity of the course and are specifically described in the Project.

10. If there are significant curricular adaptations, it is determined that this circumstance must be expressly identified in the diploma or certificate by mentioning paragraph b) of paragraph 4 of article 10 of Decree-Law No. 54/2018, of the 6th of July. It should be noted that this diploma establishes the legal framework for inclusive education and measures to support the learning and inclusion of students, establishing educational responses to special situations involving access to health data that are, under the terms of article 9, special categories of data and whose treatment therefore deserves greater care.

11. Pursuant to Article 3(1) of the Project, diplomas and certificates are issued electronically through the Integrated Information

and Management System for Educational and Training Offers (SIGO), which constitutes a platform for registering training actions within the scope of the National Qualifications Catalog, as well as training actions not included in the CNQ, whose operation is ensured by the Directorate-General for Education and Science Statistics (DGEEC).

12. The articulation of this platform with the information systems of schools (Article 3(8)) and with the Passe Jovem certificate (No. , which must be clearly established.

13. Access to this platform, which is freely accessible on the public Internet through the URL <https://www.sigo.pt/Login.jsp>. allows you to verify that the authentication mechanism presented is for a user

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and password and allows multiple attempts. In order to avoid brute-force attacks and safeguard the system from intrusion, complementary protection mechanisms such as 2-factor authentication or a CAPTCHA1 test should be considered.

14. It is mentioned in paragraph 2 of article 3 that diplomas and certificates are made available to their holders through electronic means and, also, through the Qualifica Passport and the Document Bag, available on the ePortugal portal. In the case of electronic means, such as e-mail, a system must be used that prevents the sending of the document(s) to a recipient other than the data subject or the respective parent.

15. As long as it is not possible to issue through SIGO, article 19 establishes that the issue is carried out through editable templates made available on the DGEEC website and uploaded to that platform, being made available in the documents area of the Qualifica Passport.

16. It is envisaged that, at the request of the holder, documents issued in electronic format may be printed and delivered on A4-size sheet (Article 3(2) and (3)).

17. Article 15(1) provides that, exceptionally, the diplomas identified in Articles 7 to 12 and 14 may be issued in paper form.

18. As can be seen, article 13 is excluded from this provision, which concerns diplomas and certificates of courses with extinct study plans which, under the terms of paragraph 2 of that article, are as a rule issued in paper form. , without prejudice to its issuance in electronic form. These documents are issued by the schools holding the student's file or, in the event of the closure

of the school where the course was completed, by the entities that keep the respective file.

19. Bearing in mind the foregoing, the reference from paragraph 1 of article 15 to article 14 - which is limited to identifying the elements that can be included in diplomas and course certificates with extinct study plans provided for in article 13 .º - seems to introduce an inconsistency, as it provides for the issue of diplomas and certificates on paper also for these documents as exceptional, which contradicts the provisions of paragraph 2 of article 13, as mentioned above.

20. Article 3(4) sets out the bodies with the competence, in each case, to issue diplomas and certificates. Thus, in groupings of schools or non-grouped schools, it is the responsibility of the administration and management body or, in the case of private, cooperative and vocational schools, the pedagogical management body. In the case of Casa Pia de Lisboa, I.P. and the Instituto do Turismo de Portugal, I.P.,

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it is up to the body to which special legislation assigns this competence. If the school where the course was completed has been terminated, the issuance of the certificate is the responsibility of the entity that is in charge of the respective process.

21. Pursuant to paragraph 6 of the same article, 'the diplomas and certificates issued in electronic format are signed by affixing a qualified electronic signature of representation, namely through the Certification System of Professional Attributes of the Citizen's Card , by those responsible identified in paragraph 4, and the issuing entity may also affix the electronic seal qualified as a means of proving the origin and integrity of the document", which ensures the integrity and authenticity of the document.

22. With regard to electronic signature, it is determined that those responsible for issuing diplomas and certificates affix their qualified electronic signature of representation, namely through the Certification System of Professional Attributes of the Citizen's Card.

23. The CNPD understands that an alternative to using the Citizen Card should be made available to employees.

24. In fact, the citizen's card is an authentic document that contains the data of each citizen relevant to the identification of natural persons, in accordance with article 2 of Law No. 7/2007, of 5 February, in the current wording established by Law No.

32/2017, of 1 June.

25. Furthermore, according to article 2 of Law No. 7/2007, of 5 February, in the current wording established by Law No.

32/2017, of 1 June, any citizen, including workers, have the right to use the citizen card only to attest to their personal identity and to identify themselves as a member of the national community, as this, by nature and principle, is the function of the citizen card.

26. It should be noted that Law No. 7/2007, of February 5, in the current wording established by Law No. 32/2017, of June 1, established, in Article 18-A, the possibility that natural persons can associate professional attributes for use in the professional context, via electronic signature, without having to demonstrate the position or function for which they present themselves. It provides for it, however, as a faculty recognized to the holder and not subject to external imposition.

27. The same idea of voluntariness is expressed in the expression "when you intend to use" expressed by the legislator no. 5 of article 18 of Law 7/2007, of 5 February, regarding electronic certification features.

28. In other words, it is a legal faculty that grants discretionary power to the holder of the citizen's card, being responsible for the formation and externalization of his/her expression of will, freely.

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29. The use of the citizen's card, as well as the use of the digital mobile key, by the officials responsible for issuing diplomas or certificates, is based on the processing of personal data, in the light of subparagraphs 1) and 2) of the Article 4 of the GDPR.

30. Thus, the use of the Citizen's Card for certification purposes, which the Ordinance provides, must remain a faculty, and an alternative means of certifying the identity of those who are responsible for issuing diplomas and certificates must be provided.

31. It is stated in Article 3 that 'the authenticity of the attributes of the certificate' is 'verifiable by means of an alphanumeric access code or other electronic means of verifying authenticity which may be developed.' It is understood that an example of the scenario considered is to compare a paper certificate with its digital version and, therefore, it is a question of electronic consultation of the document. This may mean that anyone in possession of the alphanumeric code can consult the documents and have access to the personal data contained therein. It is further added that in this way there is no control over who viewed

the personal data contained in the certificates.

32. Under the heading confidentiality and data protection, article 18 establishes that "adequate confidentiality and protection of personal data must be guaranteed, in particular with regard to access and professional secrecy, in accordance with applicable legislation".

33. This precept appears to be vague, imprecise and insufficient, and should be strengthened.

34. The Project establishes that the updating of data in SIGO is the responsibility of schools through their information systems. Also, that this update is carried out through the report with the frequency that will be defined by the DGEEC.

35. However, nothing is said as to how the data subject can exercise his right to rectification and deletion if the data contained in the documents are incorrect.

36. The CNPD cannot fail to point out that the fact that this Draft Ordinance is not supported by an impact study on the protection of personal data - which, it is recalled, is mandatory under the terms of paragraph 4 of article 18 of Law No. 4372004, of 18 August, introduced by Law No. 58/2018, of 8 August (CNPD Organization and Functioning Law) - compromises a more complete assessment of possible risks arising from the processing of personal data provided for in this Project and, above all, harms the considered decision of the holders of political-legislative power regarding the admissibility of the data processing.

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III. Conclusion

37. On the grounds set out above, the CNPD points out the need to consider complementary mechanisms of protection in accessing the SIGO, as well as the densification of the provisions of article 18 of the Project in order to clarify the rights of data subjects and how they can exercise them.

38. Also, that a data retention period be established at the end of which they are deleted.

Lisbon, 23.

august 2021