

THE -

NATIONAL DATA PROTECTION COMMISSION

OPINION No. 16/2018

I. Order

The Office of the Assistant Secretary of State for Justice sent the National Data Protection Commission (CNPd), for an opinion, a draft Ordinance that aims to update Ordinance No. 270/2009, of 17 March.

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

II. Of Appreciation

Law No. 5/2008, of 12 February, determines that the DNA markers to be included in the DNA profile file, for the purposes of civil and criminal identification, are set by a joint Ordinance of the government members responsible for the area of justice and health, after the opinion of the CNPD, in accordance with international standards and scientific knowledge on the matter.

In compliance with this legal determination, Ordinance No. 270/2009, of March 17, was approved.

The DNA markers then fixed took into account the Council Resolution of 25 June 2001 - 2001/C 187/01, but also the markers used by INTERPOL and the international scientific community.

With this draft diploma under analysis, it is intended to introduce more markers in the DNA profiles database, in addition to those already established in Ordinance No. 270/2009, of 17 March.

This need arises from the approval of the Council Resolution of 30 November 2009 - 2009/C 296/01, which «has added new markers to the current! European Standard Set, as well as the development of new mu/tip/ex systems».

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It is mentioned that the establishment of new markers to be included in the database of DNA profiles for the aforementioned purposes «(...) is fundamental in order not to lose information and to increase the power of discrimination in the face of the increase in the number of profiles of DNA in the European DNA profiles databases, reducing the chance of the existence of situations of false coincidences'.

The new markers are, like the initial ones, organized into two categories: mandatory insertion markers and complementary insertion markers.

It is stated in the preamble that they all meet the requirements laid down for their choice, namely the fact that they are not coding DNA, with the exception that stems from the regulation of operation of the DNA profile database that "in the event of any DNA markers reveal health information or specific hereditary characteristics, that marker is excluded from the DNA profiles included in the database and is no longer studied in samples to be analyzed later'.

The CNPD is responsible for ensuring that the processing of personal data is carried out in a transparent manner and in strict respect for the reservation of private life, as well as for fundamental rights, freedoms and guarantees.

And, regarding the new markers, the CNPD reiterates what it had already said in the opinion issued on Ordinance no. of other markers, in view of the purpose of creating the DNA profiles database.

However, the CNPD stresses the importance of ensuring that only non-coding material is analyzed and that the DNA regions under analysis and the techniques used will not remove any information that exceeds the limits imposed by Law No. February, and such guarantees must be reaffirmed in this draft Ordinance.

This is our opinion. Lisbon, April 24, 2018

Luis Barroso (Reporting Member)