

NATIONAL DATA PROTECTION COMMISSION

OPINION/2019/19

The Ministry of Foreign Affairs, through the Directorate-General for European Affairs, asked the National Data Protection Commission (CNPd) to comment on the reinforced comprehensive partnership agreement between the European Union and the European Atomic Energy Community and its Member States, on the one hand, and the Republic of Armenia.

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 paragraph 4 of article 36 of Regulation (EU) 2016/679, of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of paragraph 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 (Personal Data Protection Law-LPDP).

The Agreement under consideration, due to its strategic nature, which is evident from the outset in its name and also in the list of its principles and objectives, assumes a naturally comprehensive form that covers a partnership between the European Union and the Republic of Armenia, in order to strengthen their bilateral relations, maintain a comprehensive dialogue and promote the deepening of cooperation between them on factors of common interest (cf. Article 1).

The Parties agree that cooperation will cover the areas of human rights, democracy and fundamental freedoms; data protection; disarmament and non-proliferation of weapons of mass destruction; combating various types of serious crime with international repercussions; technical barriers to trade; terrorism; customs; competition; services; intellectual property; Legal cooperation; migration; money laundering and terrorist financing; illicit drugs; employment and social affairs.

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Case No. 10912/2018 1v.

Although the Agreement largely focuses on promoting common approaches in international fora, exchanging experiences, information on legislation and sharing best practices, exchanging views, forms of cooperation are also envisaged which necessarily involve the processing of personal data.

This processing of personal data is embodied in several areas of application of this Agreement, which does not regulate the

concrete way in which this foreseen cooperation is carried out, and therefore does not contain specific rules regarding the processing of personal data that result from the exchange of information. in the different domains.

However, it follows from Article 2 that the Parties uphold democratic principles, the rule of law and fundamental human rights, as set out in the Universal Declaration of Human Rights and other relevant international human rights instruments to which they are Parties. .

Article 19(1)(a) of the Agreement also prescribes the exchange of information on “terrorist groups and their support networks, in accordance with national and international law, in particular with regard to data protection and private life;».

As this Agreement appears to have characteristics similar to a framework agreement, the CNPD understands that this is not the appropriate instrument to regulate, when applicable, the processing of personal data that may result from its execution.

However, as Portugal is a party to this Agreement, as a Member State of the Union, it is obliged to comply with national and European rules on data protection¹, in particular with regard to international transfers of data to a third country - such as Armenia - and it is therefore essential to assess whether that State guarantees an adequate level of protection.

' Whether articles 19 and 20 of the LPD, Council Framework Decision 2008/977/JHA of 27 November 2008, or Directive (EU) 2016/680 of the Parliament and of the Council of 27 April 2016, to be transposed into the domestic legal order shortly.

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Given the nature of the Agreement, it is considered that the materialization of cooperation actions under it, which imply the processing of personal data, must be regulated through specific bilateral or multilateral agreements, which contain all the necessary provisions on protection of personal data. Such agreements shall be subject to the CNPD's assessment, whether negotiated bilaterally or through the Union.

This is our Opinion.

Lisbon, April 5, 2019

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João Marques, Member who reported.