

I. Request

1. By order of the Secretary of State for the Presidency of the Council of Ministers, an opinion was requested from the National Data Protection Commission (CNPd) on the draft Decree-Law 245/XXI11/2022, which defines the rules for placing, activating, signaling and use of portable cameras for individual use.

2. The CNPD issues an opinion within the scope of its attributions and competences, as an independent administrative authority with authoritative powers to control the processing of personal data, conferred by paragraph c) of paragraph 1 of article 57, paragraph b) of paragraph 3 of article 58 and paragraph 4 of article 36, all of Regulation (EU) 2016/679, of April 27, 2016 - General Regulation on Data Protection (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 internal legal order.

II. Analysis

3. This bill of decree-law (hereinafter, Project), regulates the rules for placement, activation, signaling and use of portable cameras for individual use (CPUI), commonly known as bodycams, as well as the means of transmission, storage and access to data collected and the characteristics and minimum technical requirements of the CPUI (cf. article 1 of the Project),

4. It is recalled that the use of these devices was the subject of legal provision in article 10 of Law no. 95/2021, of December 29, and that in no. 8 of this article, the decree-law refers to definition of the characteristics and standards for placing, activating, signaling and using said cameras, as well as the means of transmission, storage and access to the collected data; the same article also refers to a decree-law defining the terms of authorization for the use of portable cameras for individual use.

5. It should be noted that the CNPD has already considered a legislative project with the same object, in Opinion/2022/32, of April 19th.

6. However, it should be noted that most of the reservations raised by the CNPD in the aforementioned Opinion/2022/32 were

taken into account in this Project, in particular with regard to the circumstances that justify the activation of the recording mode (cf. Article 7 of the Project).

7. This assessment will follow the sequence of the provisions set forth in the Project, to assess the compliance of what is stipulated therein with the principles and limits defined in Law No. 95/2021, as well as in Law No. 59/2019, of 8 of August.

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i. Bodycam Authorization

8. Article 10 of Law No. 95/2021 provides for two authorizations: the first, relating to the use of the portable camera system for individual use, is the responsibility of the member of the Government who exercises direction over the security force ; the second, relating to the use of portable cameras for individual use, is the responsibility of the top leader of the security force, with the definition of the terms of this last authorization being referred to a decree-law (cf. paragraphs 1 and 2 of article 10 of Law No. 95/2021).

9. The present Project regulates in article 3 the ministerial authorization (or to be issued by the body to which the minister delegates the authorizing competence) and in article 4 the authorization by the governing body of the security force.

10. Article 3 of the Project defines rules regarding the instruction of the authorization procedure, specifying, from the outset, that the request presented by the top leader of the security force must be instructed with the elements provided for in subparagraphs d), h) to j) of no. 1 of article 6 of Law no. 95/2021, respectively: technical characteristics of the equipment used; mechanisms to ensure the correct use of registered data; proof of approval, capacity or guarantee of financing the installation of the equipment used and the respective maintenance costs; and assessment of the impact of data processing on the

protection of personal data, provided for in article 29 of Law No. 59/2019, of August 8.

11. If the exclusion of paragraphs b) and c) of paragraph 1 of article 6 of Law no. 95/2021 is understood, the others, with the necessary adaptations, must be considered, in this context.

12. From the outset, the request cannot fail to include adequate grounds for the use of a camera system of this type (cf. paragraph a) of paragraph 1 of article 6, of Law no. 95/2021, with the appropriate adaptations).

13. Likewise, it is essential to identify the security force service responsible for the conservation and processing of data, under the terms of paragraph ej of paragraph 1 of article 6 of Law no. 95/2021, in particular considering the organic structure of the security forces and the distribution of competences, with the possibility of delegation within them.

14. To explain, consider, by way of example, Law No. 53/2007, of August 31, which provides for the structure of the Public Security Police, and which in Article 38 defines as subunits of the commands territorial: the police division and the police station. While the former comprises the operational and administrative areas, the police stations are operational subunits. In this sense, with a reflection in the implementation costs and in the different geographical settings, it is important to define a priori to which service of the security force the responsibility for the conservation and processing of data will be delegated.

Furthermore, this is a setting that

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may change over time, through renewal or submission of a new authorization application, pursuant to paragraphs 3 and 4 of article 7 of Law no. 95/2021, of 29 December.

15. Likewise, the inclusion of subparagraph f) of paragraph 1 of article 6 of Law no. 95/2021, regarding procedures for informing the public about the existence of the system, is considered relevant, since , in addition to the obligation to publish on the ePortugal.gov.pt portal, with a link to the publication on the electronic platform of the governmental area of internal administration (Article 23 of Law No. 95/2021), the security forces may publish the moment from which they are in a position to resort to this new possibility of processing personal data, using the means of communication that are reasonably within their reach, namely through their institutional internet pages and social networks where they are officially registered are

represented.

16. It is also clarified that, from the perspective of the CNPD, the scope of the authorizing competence of the member of the Government must be read in the sense of understanding the definition of the general criteria for the attribution of access profiles, visualization and data extraction, pursuant to of an argument of equal reason with the ministerial authorizing competence for the processing of personal data resulting from the operation of video surveillance systems. Indeed, the definition of the delimiting criteria for the access profiles for viewing personal data and the profiles for extracting them is, or should be, subject to the authorization provided for in article 6 of Law no. 95/2021,

17 In this perspective, the top leader of the security force would be responsible, in addition to authorizing the use of cameras and their allocation, the concrete identification of such profiles (cf. Article 4 of the Project).

18. Still regarding article 3 of the Project, the reason for delimiting the opinion of the CNPD to the «rules relating to the security of data processing», provided for in paragraph 2 is not achieved. If the specificity of the purposes of the use of the CPUI system justifies not considering, specifically, the limits defined in paragraphs 4 to 6 of article 4 of Law no. respect for the conditions and limits set out in articles 18 to 20 and 22 of the same legal diploma, when considering the purposes of processing the data captured in this way. Bearing in mind the elements that must form part of the application, in accordance with what is projected in paragraph 1 of article 3, it can only be concluded that the underlying reason for the provisions of paragraph 3 of article 5 of Law no. 95/2021 extends, as there is no reason to differentiate, to the authorization procedure of the CPUI systems, with the CNPD's intervention being clearly adjusted to provide the body with authorizing competence with technical information regarding the specific conditions foreseen to guarantee compliance with the rules relating to the conservation and extraction of data and the rights of data subjects.

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19. With regard to the authorization of the use of CPUI, which assumes the prior authorization of the use of the CPUI system, in addition to the clarification left above, in point 16, it is suggested the introduction in article 4 of the Project, for reasons of system auditability, an additional number, which reflects the obligation of the top leader of the security force to keep up to date a nominal list of CPUI equipment authorized by him, by reference to the unique and unalterable identifier assigned by the manufacturer, and the corresponding security force service responsible for the conservation and processing of data (cf. paragraph e) of paragraph 1 of article 6 of Law no. 95/2021).

ii. Use of Bodycams

The. carrying mode

20. Considering now the regime relating to the mode of carrying the CPUI, article 5 of the Project is limited to mentioning that the cameras are fixed to the uniform or equipment of the police officer, placed in a visible way and without obstacles that prevent the scope your total angle of capture.

21. Taking into account the regulatory nature of the present Project, it appears that article 5 is not very precise in defining the way in which cameras are to be carried, limiting itself to adding, in relation to the provisions of paragraph 3 of article 10 of Law No. 95/2021, the reference to and without obstacles that prevent the full coverage of its catchment angle. It is therefore important to be more specific here as to the area where the equipment is to be placed, in terms that allow ensuring the usefulness (aptitude or suitability) of these cameras for the intended purposes.

22. In this sense, the CNPD suggests that it be specified that the camera be placed at least at chest level and on the front of the police officer and that the possibility of the security force agent attaching the CPUI to the belt be explicitly prohibited , due to the risk of deliberate or accidental obstruction of image capture through the uniform jacket.

23. At the same time, the placement of the camera in tactical police operations in which ballistic shields are used should be specifically regulated, for example, providing for the use of a specific accessory for coupling the CPUI to the said shield, taking into account that this is the means that ensures a better viewing angle.

B. Principles of use

24. As for article 6 of the Project, concerning the general principles of use of CPUI, the CNPD allows itself to point out that the use of this system is unlikely to defend the right to image and word, suggesting, therefore, the elimination of the verb 'defend',

since, for this purpose, the use of the verb 'respect', which already appears in that rule, is sufficient.

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w. Recording

25. Still with regard to the use of CPUI, article 7 regulates the recording of images and sound, specifying in paragraph 1 that «[a]s CPUI are carried in active mode, the recording mode being activated only when at least one of the circumstances provided for in this Article is verified”.

26. In question seems to be the functionality of, through the parameterization of a certain period of time, allowing the equipment to record images and sound, in practice, continuously during that period, adding this recording to the one that follows, after the agent of the security force trigger the recording.

27. Considering that Law No. 95/2021 does not provide for the carrying of CPUI in active mode and given the imprecise nature of this term, the CNPD considers it important that a diploma with regulatory functions of the legal regime specify the concept of 'active mode ', explaining its real meaning, even if only by referring to the provisions of subparagraph b) of paragraph 2 of article 16 of the Project, so that citizens can understand the scope and impact of the processing of personal data regulated herein , thus fulfilling the functions of clarity and security that restrictive legal norms of rights, freedoms and guarantees must ensure.

28. No. 3 of the same article 7 defines the situations that justify the recording of police interventions, noting only that some of them are a specification of the general clause of the practice of a criminal offense, provided for in subparagraph a) of the same number , as with paragraph d) which, by providing for verbal interaction with a citizen in which insulting, insulting and defamatory statements are made against the police officer or against the police institution, seems to delimit a situation likely to be included in article 187. of the Penal Code.

29. With regard to the provision in subparagraph h) of paragraph 3 of article 7 of the Project, which legitimizes the recording of police operations by the CPUI when situations of alteration of public order occur, the CNPD draws attention to the indispensability of if clear rules are defined regarding the use of these cameras in the context of demonstrations or meetings,

maximum of a political nature, due to the risk of highly conditioning the fundamental right of assembly and demonstration.

30. In this context, the CNPD also recommends considering the possibility of recognizing the right of the citizen to request that the security force agent record the sound and image of the police intervention involving him.

31. Still regarding the regime contained in article 7 of the Project, the provisions of paragraph 5 raise doubts as to the pertinence of the prohibition of permanent or indiscriminate recording of facts that are not related to

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the evidentiary police interest, as it appears that, if they are facts devoid of such interest, their recording should be prohibited, without further qualification.

iii. data conservation

32. Article 11 of the Project, in accordance with its epigraph, regulates the management and storage system for recorded images.

33. Firstly, the epigraph and paragraph 1 of the article are not exact, since, in addition to the images, the system also manages and preserves the sound, recommending, therefore, at least the correction of the wording in paragraph. ° 1.

34. Second, paragraph 2 of the same article refers to the storage and maintenance components associated with the system, in order to specify security rules. As it is understood that the system components also comprise other dimensions than just storage and maintenance, and for a better specification of security conditions, since the storage unit can be physically dissociated from the server that houses the system itself, the CNPD suggests that paragraph 2 of article 11 has the following wording: The processing, storage and maintenance components of the system are kept in a reserved place, with restricted access, equipped with a mechanism for controlling and recording access.

35. With regard to paragraph 3 of article 11, it is necessary for the system to transfer data only from authorized equipment, which must be referenced by a unique and unalterable identifier. Thus, the following wording is suggested: Without prejudice to other security measures, the system validates the communication with the CPUIs via the unique and unalterable identifier assigned by the manufacturer, only transferring the recordings of the CPUIs that were previously authorized by the top commander of the force, and is equipped with functionality that requires the association of the identification of the police element to the transferred data.

36. Regarding paragraph 4 of article 11, the provisions here seem insufficient, considering, on the one hand, that there are encryption techniques currently considered insecure. On the other hand, it is important to ensure that, regardless of the method chosen to guarantee the integrity of the transferred images (e.g., via digital signature, hashing algorithm), this method must, in light of the state of the art and available technology, be considered safe at the time of its implementation, and it is also essential to verify the integrity of the data, without licensing costs for the other parties involved in the process.

37. Thus, the CNPD suggests the following wording: In the process of transferring images recorded by the CPUI, the system must guarantee that they are stored in encrypted form, using a secure cipher algorithm, as well as their security, integrity and inviolability, ensuring that the integrity verification method is freely available at any stage of the evidence's chain of custody.

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38. With regard to paragraph 5 of the same article, which specifies the minimum technical requirements relating to the storage of data, and starting with the provisions of paragraph a), it is recalled that there are other operations, in addition to the extraction of recordings, the risk of which of occurrence must be taken care of, as happens with the alteration (overlapping) or the mere access, recommending the reformulation of its wording.

39. On the other hand, if what is intended to be regulated is the access and extraction of images that are still in the CPUI, the protection of the recordings must be ensured in the camera itself and not in the storage system provided for in this paragraph 5 of the Article 11 of the Project, specifying, for example, that the CPUI communicates only with digitally signed software or any other security guarantee(s).

40. To that extent, the CNPD recommends, at this point, that the provisions of Article 11(5)(a) of the Project be eliminated and that a provision regarding access to recordings in the CPUI be included in Article 12. , with the following proposed content: Do not allow recordings stored in the CPUI to be accessed by any method or procedure other than that initially provided for by the system referred to in the previous article.

41. Also in paragraph 5, now in paragraph g), it is suggested to replace the corresponding camera number with a corresponding unique and unalterable identifier, assigned by the camera manufacturer.

42. With regard to paragraph a) of paragraph 6 of the same article, taking into account that a given user profile corresponds to certain access permissions, the latter not being limited to those set out in that paragraph, and also aiming to ensure the auditability of changes for profiles, it is suggested that they be replaced by: Allowing the definition of user profiles and respective access permissions, namely viewing, extracting and auditing data, as well as recording all changes.

43. With regard to item b) of paragraph 6, it is suggested that the amendments to the system configurations be added to the final part of the text.

44. With regard to subparagraph c) of paragraph 6, assuming that the embedded medium that allows the visualization concerns a video viewer incorporated in this storage system, and since the recording is stored in encrypted form, this viewer serves not only to decipher and display its content, but above all to record such an event, guaranteeing the respective audit.

45. A final note regarding article 11 of the Project, to underline that it is, strangely, silent on the location of the system's installation. In view of the different possibilities - which is exemplified (using technical expressions in English): on-premises, in cloud (private; from the State; from the manufacturer or third party), hybrid solution - it should be noted that given the nature of of data processing and the need to guarantee the conditions of security, integrity and inviolability, it is at least required in the legal norm that the

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said system is under the full control of the controller, which is unlikely to be compatible with third-party hosting solutions that, ultimately, will always manage the infrastructure that supports this hosting.

46. For the same reason, we warn of the need to segregate the network attached to the system and barring access to the Internet, due to the risks involved and its unnecessary nature. In fact, for the correct functioning of the system it is not necessary that it connects to the Internet, it must be prepared to receive updates in offline mode, through the installation of patches, or through its reinstallation; Likewise, CPUi updates must be carried out using the same image management system, via a cable connection to the dedicated station (dockstation). Indeed, the simple fact that CPUis are equipped with an accessory (antenna) that allows wireless communication represents, in itself, an attack vector.

47. With regard to Article 12 of the Project, which regulates the security conditions and storage of recordings in the digital management and storage system, it is important to add the security conditions applicable to the backups of the said system which, if they take place, must be encrypted and kept in a reserved place with restricted access, as required in paragraph 2 of article 11. It should be noted that the backup of a system is generally carried out within the scope of the operating system that hosts it, entailing a lot of information that is not specially protected, which is why it should also be encrypted, given that this is already a characteristic of current backup systems.

48. Specifically with regard to paragraph 6 of article 12, it is suggested that the wording be corrected as this is not, strictly speaking, recordings relating to judicial proceedings, but rather recordings used in judicial or disciplinary proceedings; as well as being essential to provide for the obligation to communicate the conclusion of the judicial or disciplinary process, under penalty of the recordings remaining *ad aeternum* in the security force system.

49. Regarding access to the recordings, regulated in article 13 of the Project, two observations. The first, to point out that, in a rule of law, the decision, by the top leader of the security force, to inspect the circumstances of the police intervention, provided for in paragraph d) of paragraph 2, must always be substantiated. The second, relating to the registration of access operations, relates to the possibility that, at the time of viewing, the images are improperly captured, namely via mobile phone, which is why it is recommended that, at the end of paragraph 4, add and of the elements present at the time of visualization.

50. In this sequence, in order to prevent the illicit dissemination of recorded images, namely in the media or social networks, the CNPD suggests that the Project envisages the adoption of a mechanism that registers (in metadata or in the images themselves) the identification of the user accessing them.

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iv. Characteristics and technical requirements of bodycams

51. Considering article 16 of the Project, it should be noted that distinguishing the law between technical characteristics and minimum technical requirements, as indicated in article 1 of the Project itself, it should be mentioned here characteristics and minimum technical requirements , altering accordingly the epigraph and body of paragraph 1.

52. With regard to paragraph e) of paragraph 1 of article 16, the CNPD renews its warning that a horizontal viewing angle of 40° falls far short, not only of that currently supported by this type of equipment (most in order from 120° to 140°), but above all that which is the human field of vision (approximately 180° in the horizontal plane). It is feared, for this reason, that it will not be able to adequately capture the surroundings and perceptible by the security force agent and, therefore, that it will not be fully suitable for the purpose of its use, suggesting its replacement by a minimum angle 90° horizontal view.

53. With regard to item i), attention is drawn to the fact that a device, even when in operation, consumes more energy during recording. For this reason, the wording of this paragraph should be revised, so as to guarantee the autonomy of the battery (which must be rechargeable), not only for the period of operation, but also in order to accommodate the recording for as long as deemed necessary.

54. The CNPD also recommends considering the prediction in this article of two other requirements: the equipment's battery not being easily ejectable, in order to prevent the same from happening during a recording, and physical access to the CPUI memory unit being protected by the equipment manufacturer.

55. Still in the context of article 16, now focusing on the provisions of paragraph 2, on the CPUI recording system, it is recalled what was said above, point 28, about the standby mode that allows recording 30 seconds prior to pressing the record button, possibly specifying in the standard the automatic deletion or elimination.

56. With regard to Article 16(2)(e), which requires the guarantee of a minimum image resolution of Full HD 1280*1080 pixels, attention is drawn to the fact that full high definition (Full HD) corresponds to the standard resolution of 1920*1080 pixels, also often referred to as just 1080, corresponding to the vertical resolution.

57. With regard to point i) of paragraph 2 of the same article, which states «making sound recording possible», it should be

noted that this wording may be misleading, allowing the interpretation that sound recording is a mere possibility , which can be configured by the person in charge of the treatment, or activated by the security force agent. It appears that, in order to fulfill the purposes of using CPUI, sound recording is always mandatory.

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58. In point j) of paragraph 2 of article 16, it is also important to take care to record the cause of the cessation of recording (i.e., by action of the agent, due to lack of memory, due to depletion of battery charge, etc.). Thus, the CNPD suggests changing the wording of this paragraph, in order to include the cause of cessation of the recording.

59. Also within the scope of the same paragraph j), with regard to the format of the date, it should be specified that it must comply with the NP EN 2680 (1993) standard of the Portuguese Institute of Quality (i.e., year/month/day).

60. In point k) of paragraph 2 of article 16, for the reasons already explained above, in point 38, it is recommended that the qualifier secure be added to the encryption system.

61. In subparagraph m) of the same paragraph, concerning the memory, the requirement that it cannot be ejected must be added.

62. The CNPD also recommends considering the prediction in paragraph 2 of article 16 of the following requirements:

- i. equipped with a security mechanism for the eventual situation of its loss or theft;
- ii. ensure adaptation to various ambient lighting conditions, eliminating the need for compensation a posteriori;
- iii. allow the capture of audio, in a perceptible way, up to a reasonable minimum distance (and that is specified in the Project);
- iv. ensure the recording and export of audio and video in a Standard, open and non-proprietary format, in so that they can be watched via free applications, without the need for conversion.

III. Conclusion

63. The CNPD points out that most of the reservations raised in its Opinion/2022/32 on the previous draft decree-law regulating article 10 of Law no. 95/2021, of December 19, were considered into consideration in the Project under analysis.

64. However, there are aspects in this Project that must be corrected or improved, to ensure compliance with Law No.

95/2021, maximum, regarding the purpose of using the cameras and the security and auditability of the data processing system personal data, recommending to:

The. Occasional alteration, for reasons of greater precision or rigor, of the wording of the rules indicated above, in points 25, 34 and 50;

B. The amendment of several provisions of the Project specified in points 18,20, 23, 24, 28, 35 to 44 and 46 to 63.

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65. It is also recommended that paragraph 2 of article 3 of the Project be amended, regarding the scope of the CNPD's pronouncement, as it is clear that, in this context, it is justified that it covers the verification of compliance with articles 18. ° to 20. ° and 22. °, in terms similar to those provided for in paragraph 3 of article 5 of Law no. 95/2021.

66. The CNPD considers it necessary to define clear rules regarding the use of these cameras in the context of demonstrations or meetings, maximum of a political nature, due to the risk of highly conditioning the fundamental right of assembly and demonstration (cf. above, point 30) .

67. Finally, it recommends considering the possibility of recognizing the right of the citizen to request that the security force agent record the police intervention involving him (cf. above, point 31).

Approved at the meeting of November 15, 2022

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