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í > -4 NATIONAL DATA PROTECTION ISSION

OPINION No. 12/2018

I. Order

The Secretary of State for Energy sent, for the purpose of indictment, to the National Commission for Data Protection (CNPd) the draft diploma that establishes an extraordinary regime to enable the connection of dwellings integrated in nuclei of precarious housing to the public distribution network of electricity. electricity.

The request made stems from the powers conferred on the CNPD by paragraph 2 of article 22 of Law no. 67/98, of 26 October, amended by Law no. Protection of Personal Data (LPD), and the opinion is issued using the competence set out in paragraph a) of paragraph 1 of article 23 of the same legal diploma.

II. appreciation

The draft decree-law (hereinafter "Project") under analysis aims to create conditions to ensure access to the supply of electricity for inhabitants of precarious neighborhoods or nuclei of housing, since electricity is an essential good and is subject to public service obligations, thus following up on the recommendation contained in Resolution of the Assembly of the Republic No. 151/2017, of 17 July.

It is an admittedly extraordinary regime, of a provisional nature, to guarantee the supply of electricity to needy housing units, which involves close collaboration between the State, municipalities and electric energy distribution operators, not regulating the possession, property or any other right, real or obligatory, relating to the immovable property in question.

Pursuant to article 3 of the Project, a "nucleus of precarious housing" is considered to be one that, lacking conditions for the supply of electricity, constitutes a set

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of existing and inhabited dwellings, in the same building or in adjacent buildings, or expressly identified by the competent municipal council as such.

In order to make access to electricity supply effective, the first step is to identify the situations covered (cf. Article 4 of the Project). According to paragraph 1 of the aforementioned article, the municipality identifies the nuclei of precarious housing existing in the respective municipality and the households residing there, for the purposes of applying this decree-iei, by deliberation of the municipal council.

For this purpose, paragraph 2 of article 4 of the Project prescribes that the municipal council may resort to the competent services of Social Security to identify the households residing in each of the dwellings integrated in the nuclei of precarious housing.

Paragraph 3 of the same article determines that the identification of the precarious housing units existing in the municipality, of the households residing there, as well as the respective location plans, are published in public notice posted in the places of rest and on the website of the town hall.

The wording of article 4 of the Project does not specify whether the identification of the households referred to contains personal data, that is, it includes information that makes it possible to individually identify the people who make up the household. In the explanatory memorandum, there is also no reference to this issue, which would allow assessing the need and suitability of processing personal data at this stage. However, the provision for recourse to social security for the identification of households, contained in paragraph 2, is indicative of the intention to proceed with the processing of personal data.

In the absence of elements that allow assessing the concrete need for such treatment, the CNPD considers that it should be considered, first of all, if it will not be effectively enough, in a first survey of the situations covered, to record only the number of households and the number of people who compose them residing in each of the dwellings, which would immediately allow to perceive the number of people affected, how they share the space and how many connections/supply contracts could be

needed.

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In addition, the social action or housing services of the municipal councils will certainly already have in their possession, within the scope of the specific activity they carry out, relevant information to allow the general identification of households, without further processing of personal data.

In compliance with the principle of data minimization, as set out in subparagraph c) of no. .

Furthermore, in this case, as is expressly recognized in the explanatory memorandum, we are dealing with families in a situation of great economic and social vulnerability, so the processing of personal data in this context must be covered with special care, in particular with regard to its public exposure, since it concerns data relating to the private life of individuals, therefore considered sensitive data, within the meaning of Article 7(1) of the LPD, which have a high discriminatory potential. Therefore, it should be clear in the legal text that the identification of precarious housing units and the respective households residing there, which is carried out by deliberation of the municipal council, cannot contain the individual identification of the people who make up the household, but must be limited to information of a relevant statistical nature.

Secondly, any access by municipalities to personal information held by Social Security, which is covered by the duty of secrecy, can only be carried out through a legal provision that justifies its need, which clearly establishes the conditions for the processing of data, namely the explicit purpose, the data being processed, the means of consultation and respective security measures, the data retention period. The present Project, in addition to not constituting, in its form, as the appropriate legal instrument to allow the access of municipalities to social security, also does not contain the necessary elements indicated above, not containing, therefore, the degree of predictability required when intrusion into private life is involved.

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For more reason, the considerations made above apply to the content of paragraph 3 of article 4 of the Project, if the processing of personal data in the identification of households residing in precarious housing is at stake. Again, it is reiterated that the rule is not precise enough to conclude whether the information disclosed in the public notice and on the Internet contains the name of the people who make up the household or other data that make the family members identifiable by third parties.

However, the CNPD cannot fail to point out that this is manifestly excessive, if the implicit objective is the individual identification of the people who make up a household or the inhabitants of a dwelling and its location. It would not be understandable the purpose of such public disclosure, particularly on the website of the municipal council, which clearly transcends the territorial scope of the municipality and a reasonable period of time, spreading to an open world network the situation of extreme need and vulnerability of people living in this area. moment without water supply and electricity supply. This would be an absolutely intolerable situation and one that would lack any basis for legitimacy.

In a second phase, after identifying the situations covered, the nuclei of precarious housing existing in the territorial area of the respective municipality are communicated to the distribution network operator (ORD), characterizing them and containing all the relevant elements for the purpose of surveying the network. of local distribution Once the necessary infrastructure for connection to the distribution network has been completed, it is up to the municipality to request the DRO for the provisional connection between the housing nuclei and the network (cf. article 7) and it is up to the residents to request the DRO to connect to the identified dwellings (cf. Article 8).

Article 8 describes the procedures and documents necessary to request the DRO to connect the dwellings to the network, which may even be shared by a group of dwellings, depending on the configuration of the housing nucleus, the costs inherent to the installation and the respective municipal support, with a view to the conclusion of provisional contracts by residents for the supply of electricity (cf. article 12).

notification of these to conclude the contracts, as well as the rule that requires that the change of the holder of the supply contracts can only be made request from the municipality that there is a need for the processing of personal data by the municipalities to fulfill these purposes. However, the Project should expressly provide for this data processing and its limits within this scope.

A specific feature is also prescribed, within the framework of the contract signed with the supplier of last resort, which provides that the other residents of the fire (which can bring together two families, for example) can acquire the condition of beneficiary of the contract, through adhesion and express acceptance of the contractual conditions, starting to respond jointly with the contracting resident and being able, in case of omission of the latter, to assume the respective rights and obligations. This situation does not raise obstacles from the point of view of data protection, since it is part of a particular context of the execution of the contract, reinforcing the guarantees of access to the electricity supply, depending on the will of the other residents.

III. Conclusion

1. Personal data should only be processed if it is essential to fulfill the purpose in view, that is, to guarantee the access of people residing in precarious housing units to the supply of electricity.
2. Access by municipalities to personal data held by social security must be duly and specifically regulated by law, which is not the case with the current Project, either in terms of form or content.
3. It will not be admissible, under any circumstances, for manifestly excessive and intrusive in the sphere of private life, that the identification of precarious housing existing in the municipality and of the households residing there is disclosed in

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public notice or on the municipal council's website with personal data, that is, containing any information that directly or indirectly identifies an individual or that allows their identification.

4. The Project should contain specific rules regarding the processing of personal data, expressly providing for the data processing to be carried out and conditions for its treatment, namely its purposes, categories of personal data to be processed, retention periods, data communications to third parties.

Lisbon, April 3, 2018

Filipa Calvão (President)