

National Data Protection Commission

OPINION/2021/17

I. Order

1. The Commission on Economy, Innovation, Public Works and Housing of the Assembly of the Republic asked the National Commission for Data Protection (CNPd) to comment on Draft Law No. 69/XIV/r, which aims to grant the Government legislative authorization to approve the remedial regime applicable to the breach of the provisions of Council Regulation (EC) No. 2271/96, of 22 November 1996, on protection against the effects of the extraterritorial application of legislation adopted by a third country and against measures based on or resulting from it, as amended by Council Regulation (EC) No. 807/2003, of 14 April 2003, by Regulation (EU) No. 37/2014, of the European Parliament and of the Council of 15 January 2014 and by Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018.

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, in conjunction with subparagraph b) of paragraph 3 of article 58, and with paragraph 4 of article 36, all of Regulation (EU) 2016/679, of 27 April 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 n° 58 /2019, of 8 August, which enforces the GDPR in the domestic legal order.

II. Analysis

3. The Council of the European Union adopted Regulation (EC) No. 2271/96, of 22 November 1996, (Regulation) on protection against the effects of the extraterritorial application of legislation adopted by a third country and against measures based on or resulting from it, as amended by Regulation (EC) No. 807/2003, of the Council, of 14 April 2003, by Regulation (EU) No. 37/2014, of the European Parliament and of the Council, of 15 of January 2014, and by Commission Delegated Regulation (EU) 2018/1100, of 6 June 2018, with the aim of safeguarding the established legal order, the interests of the European Union and of natural and legal persons exercising rights under the Treaty establishing the European Union.

4. Article 9 of the Regulation provides that Member States determine the penalties applicable to breaches of any relevant

provisions contained therein.

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5. Thus, this Draft Law aims to grant the Government legislative authorization to approve the sanctioning regime applicable to the violation of the provisions of the Regulation, defining its meaning and extent in article 2.

6. In these terms, the draft Decree-Law resulting from the legislative authorization (Project) will apply to all natural and legal persons indicated in article 11 of the Regulation, which article 2 reproduces fully.

7. In turn, article 4 of the Project determines that, for the purposes of article 2 of the Regulation, the Directorate General for Economic Activities is the competent entity, and the information "may be sent directly to the European Commission, or through the DGAE, to the electronic address indicated on the website of this entity". Natural or legal persons must inform the DGAE of the request and granting of authorization to comply, in whole or in part, with the requirements or prohibitions referred to in the second paragraph of article 5 of the Regulation.

8. The Project defines the administrative offenses and the respective fines and gave the Authority for Food and Economic Security (ASAE) competence to open and instruct the respective processes, with DGAE reporting to ASAE all illicit acts of which it is aware in this matter. The application of sanctions is the responsibility of the inspector general of ASAE, who may delegate this competence under the terms of the law.

9. Finally, article 11 enshrines as a subsidiary right the general regime of the mere social ordering offense, contained in Decree-Law No. 433/82, of October 27, in its current wording.

10. Draft Law No. 69/XIV/Ia does not raise reservations from the perspective of protection of personal data, as does the text of the Draft Decree-Law.

Lisbon, February 1, 2021

Maria Cândida Guedes Oliveira (Rapporteur)