

National Data Protection Commission

OPINION/2022/113

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 No. 337/XXIII/2022, which amends the Porta 65 and Affordable Lease.

2. The request for an opinion, which was received by the CNPD on December 14, 2022, set the deadline for issuing the opinion on December 18, 2022 (a Sunday), which was changed to the 19 December, following a request for clarification by the CNPD.

3. 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 RGPD in the internal legal order.

II. Analysis i. previous point

4. The CNPD begins by pointing out that the legal duty to consult the CNPD within the scope of legislative procedures related to the processing of personal data, provided for in paragraph 4 of article 36 of the RGPD and in article 18, paragraphs 3 and 4, of Law No. 43/2004, of August 18, does not constitute a mere procedural formality without substantive relevance, the law intending that the recommendations and observations of the CNPD are effectively considered before the final approval of the draft diploma Cool.

5. For this purpose, it is important that the CNPD has the time adjusted to an in-depth analysis of the relevant norms of each draft diploma, which is why the deadlines for issuing opinions must take into account the technical and legal complexity of that

analysis and the circumstance that the activity of this administrative entity is not exhausted, far from it, in the issuance of opinions of this nature. Hence, the legally established period is ten consecutive days, which may be shortened only in cases of duly substantiated manifest urgency - cf. paragraphs 1 and 2 of article 4 of Decree-Law no. 274/2009, of 2 October.

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6. To that extent, a short period - in this case, which implies three working days for the issuance of the opinion without it being substantiated in reasoned urgency, is likely to jeopardize the assessment by the CNPD and, with that, is likely to jeopardize the exercise itself of political-legislative power.

ii. Omissions in the rules that provide for the processing of personal data

7. The draft Decree-Law under analysis amends Decree-Law No. 308/2007, of September 3rd, last amended by Law No. 114/2017, of December 29th, which creates the Porta 65 program - Renting by Young People, an instrument of financial support for renting by young people, as well as Decree-Law No. 68/2019, of May 22nd, amended by Decree-Law No. 81/2020, of October 2nd, which creates the Affordable Lease Program and Decree-Law No. 69/2019, of May 22, which establishes the special regime for affordable lease insurance contracts within the scope of the Affordable Lease Program.

8. Focusing attention on the changes introduced, the CNPD points out that the draft Decree-Law amends Article 6 of Law No. 114/2017, of December 29, in its current wording, providing that «[a] application for Portal 65 - Youth is carried out electronically on the IHRU website or through the Single Services Portal provided for in Council of Ministers Resolution No. 46/2019, of February 22", and that "[t]odos os elementos necessary for the preparation and verification of applications are obtained through interoperability mechanisms established between the IHRU, entities in the areas of finance and social security and other public entities competent in the matter, whenever applicable» - cf. paragraphs 1 and 5 of article 6 of Law no. 114/2017).

9. The wording of articles 19 and 20 of Law no. 114/2017 is also amended, where it is provided that «[the] collection of the data referred to in the previous number is done by filling in the existing electronic form on the program's computer platform, in which young people, members of their household, as well as ascendants, if applicable, authorize the IHRU to confirm the data collected with the Tax and Customs Authority, the Social Security Institute or other entities authorized for that purpose, under the terms of the following article.», and that «[the] verification of data relating to income, the composition of households and the properties registered in their favor is carried out through interoperability mechanisms established between the IHRU, the entities the areas of finance and social security and other public entities competent in the matter.»

10. At the same time, the new wording of Articles 11 and 16 of Decree-Law No. 68/2019 includes similar rules, with the necessary adaptations, within the scope of the Affordable Lease Program.

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11. What stands out is that these provisions provide for the communication and consultation of personal data without imposing or conditioning their implementation and use to the adoption of appropriate security measures to protect personal information.

12. In fact, all the components foreseen for the communication and consultation of personal data - Portal da Habitação Porta 65 and Arrendamento Acessível, as well as the interoperability mechanisms and the reference to interconnection mechanisms, until the operationalization of the interoperability mechanisms between the Institute of Housing and Urban Rehabilitation, I. P., and the Tax and Customs Authority (cf. no. 3 of article 9 of the Project) - are not accompanied by any legislative guidance regarding the need to adopt security measures and data protection.

13. Thus, the CNPD understands that the legislator cannot continue to resign from the role of guidance regarding the processing of personal data, especially when they have a considerable degree of sensitivity, without, as it happens here, even referring to the administrative regulation the definition of rules relating to adequate security measures for the protection of personal data subject to treatment, recommending, therefore, that in this draft Decree-Law such omission be corrected.

Lisbon, December 19, 2022

Filipa Calvão (President, who reported)

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