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DATA PROTECTION

Case No. PAR/2020/41

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OPINION/2020/57

I. Order

The Budget and Finance Committee of the Assembly of the Republic asked the National Data Protection Commission (CNPd) to issue an opinion on Draft Law no. and of the Council of 17 May 2017 on the rights of shareholders of listed companies with regard to their long-term involvement.

The request made and the present opinion fall within the attributions and powers of the CNPD, as the national authority for the control of the processing of personal data, in accordance with the provisions of subparagraph c) of paragraph 1 of article 57 and n. 4 of article 36 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Regulation on Data Protection - GDPR), in conjunction with the provisions of article 3. , in Article 4(2) and Article 6(1)(a), all of Law No. 58/2019, of August 8 (which aims to ensure the execution , in the domestic legal order, of the GDPR).

The assessment of the CNPD is limited to the rules that provide for or regulate the processing of personal data.

II. appreciation

This draft law aims to transpose, into the domestic legal system, Directive (EU) 2017/828 of the European Parliament and of the Council, of 17 May 2017, which amends Directive 2007/36/EC of the European Parliament and of the Council, of 11 June 2007, concerning the exercise of certain rights of shareholders of listed companies, with regard to incentives for their long-term involvement.

The Draft Law amends the Securities Code, approved by Decree-Law no. 486/99, of 13 November, amending the General Regime for Collective Investment Undertakings approved by Law no. 16/2015, of 24 February, to the amendment of the General Regime for Credit Institutions and Financial Companies, approved by Decree-Law No. 298/92, of 31 December, to the repeal

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of Law no. 28/2009, of 19 June, and the determination of the regime of measures and sanctions applicable to non-compliance with the rules of this Draft Law.

As a preliminary note, it should be noted that the CNPD has already commented on the draft of this Draft Law, through Opinion No. 34/20191, of June 19, 2019. . Thus, the present pronouncement closely follows the aforementioned Opinion, with the amendments considered convenient.

It is now important to analyze the specific issues that arise in terms of the protection of personal data:

1 — Article 3 of the Draft Law under analysis adds articles 22-A, 26-A, 26-F, 29-B to 29-E. 245.º-C, 249.º-A to 249.º-D, 251.º-A to 251.º-E to the Securities Code.

However, Article 29b on the heading “Identification of Shareholders” establishes that companies issuing shares admitted to trading on a regulated market have the right to request from the managing body of the centralized system information regarding the identity of their shareholders, including the name and contact details of the shareholder (cf. no. 1, point a)), and this entity “requests the financial intermediaries participating in that centralized system to provide the services provided for in point a) of article 291, information concerning the identity of the shareholders, who must respond immediately to the request” (paragraph 2). It should be noted that personal data must be deleted up to 12 months after the issuing companies, the management entity of the centralized system and the financial intermediaries that provide the services provided for in paragraph a) of article 291 are aware that the person in concerned has ceased to be a shareholder, without prejudice to any longer retention period provided for by law (cfr no. 4).2

These precepts aim at the processing of personal data under the terms of article 4, points 1) and 2), of the RGPD, so it is recommended that an express reference be made to the legal regime of data protection enshrined in the RGPD, safeguarding

' Available at https://www.cnpd.pt/home/decisooes/Par/PAR_2019_34.pdf

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Those provisions correspond to Article 3a(3) and(4) of the aforementioned Directive.

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the information, access and rectification rights of data subjects under the terms set out in articles 14 to 16 of this legal instrument.

Attention is also drawn to the fact that paragraph a) of paragraph 1 of article 29-B, when providing information on the identity of shareholders, mentions that this includes the name and contact details of the shareholder. However, the collection and conservation of personal data comply with the principles of purpose and data minimization, so only identification elements of shareholders that are strictly necessary for the purpose in question should be collected - cf. Article 5(1)(b) and c) of the GDPR. It is therefore recommended to specifically list the personal data to be processed.

Finally, it should be noted that the consecration of the duty of the aforementioned entities to delete personal data within 12 months after becoming aware that the person concerned is no longer a shareholder demonstrates that one of the basic principles of data processing - the of the limitation of conservation, foreseen in subparagraph e) of paragraph 1 of article 5 of the RGPD - is fulfilled.

2 - In turn, article 245-C introduced by the Draft Law requires the management body of companies issuing shares admitted to trading on a regulated market to prepare a report that provides a comprehensive view of the remuneration awarded or due during the last financial year to each member of the management and supervisory bodies. The Draft Law stipulates that this report must be published on the issuer's website and remain available for 10 years.

This rule, which essentially reproduces the provisions of Article 9-B introduced by Directive 2017/828, provides for the disclosure on the Internet of personal data relating to the remuneration situation of the directors of the companies covered, in terms that restrict substantially the right to protection of personal data. In fact, the online publication of this personal information allows the use of the data for the most diverse purposes, without it being strictly feasible to control this use. The long period in which such personal information is available (10 years) also contributes to this.

In any case, the CNPD recognizes that the national legislator, on this point, cannot contradict the option of the European legislator, given that the Directive justifies

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expressly this legislative option (cf. recitals 33 et seq), giving precedence over that right to the objective of transparency in order to reinforce the level of accountability of the management and supervisory bodies and the supervisory capacity of shareholders in relation to their remuneration.

The only caveat that, in this regard, the Directive makes, in the sense of safeguarding a minimum dimension of that fundamental right, is also enshrined in the draft Law Proposal. Indeed, pursuant to Article 245c(9), that report cannot include special categories of directors' personal data, or personal data relating to their family situation³.

For greater legal clarity, the CNPD suggests that, in this number, an express reference be made to the list of special categories of personal data provided for in Article 9(1) of the GDPR.

iii. conclusions

On the grounds set out above, the CNPD recommends that, in article 29-B, now added to the Securities Code, express reference be made to the legal regime for data protection enshrined in the RGPD, safeguarding the rights of information, access and rectification of data subjects under the terms provided for in articles 14 to 16 of this legal instrument.

The CNPD also recommends the densification of paragraph 9 of article 245-C, referring to the definition of special categories of personal data under the terms of article 9 of the RGPD.

Lisbon, June 1, 2020

Maria Cândida Guedes de Oliveira (Rapporteur)

J This article corresponds to paragraph 2 of article 9-B of the Directive, which refers therein to the definition of special categories of personal data within the meaning of article 9 of the GDPR.