

t NATIONAL COMMISSION ' ■ ON DATA PROTECTION

OPINION/2019/21

I. Order

The Directorate-General for Social Security (DGSS) of the Ministry of Labour, Solidarity and Social Security requests the National Data Protection Commission (CNPd) to issue an opinion on the Administrative Agreement for the Implementation of the Multilateral Convention on Social Security of the Community of Countries of Portuguese Language (CPLP).

In addition to the Portuguese Republic, the Republic of Angola, the Federative Republic of Brazil, the Republic of Cape Verde, the Republic of Guinea-Bissau, the Republic of Equatorial Guinea, the Republic of Mozambique, the Democratic Republic of São Tomé and Príncipe and the Democratic Republic of Timor-Leste.

The request made and the opinion issued now derive from the attributions and powers of the CNPD, as an independent administrative entity with powers of authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and by the paragraph 4 of article 36 of Regulation (EU) 2016/679, of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of paragraph 1 of article 21, ° and no. 1 of article 22, both of Law no. 67/98, of 26 October, amended by Law no. 103/2015, of 24 August (Personal Data Protection Law - LPDP).

II. Agreement Objectives

With this proposal for an Agreement, the Parties wish to develop relations in the field of social security with each other, enshrining the principles of equal treatment (Article 4) and the determination of applicable legislation (Article 7), with in order to guarantee the acquired rights and those susceptible to acquisition by the respective nationals. It is intended to cover citizens who are or have been bound by the legislation of one or more States Parties, and who are nationals of these States, as well as their family members or dependents, regardless of their nationality.

The draft Agreement, in subparagraph a) of paragraph 1 of article 15, also provides for the conclusion of administrative agreements that materialize the necessary measures for the execution of the

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same.

III. International contracting and transfer of personal data

This Convention presupposes transfers and exchanges of personal data between the competent Portuguese authorities and those of the other CPLP States, as is clear from article 16 of Annex III to the draft Agreement in question. In light of paragraph 1) of article 4 of the GDPR, the data subject to transfer constitute personal data, therefore, under the terms of article 46 of the GDPR, the Portuguese Republic may only transfer personal data to third countries located outside the European Union. , if these countries provide adequate guarantees and on condition that the data subjects enjoy enforceable rights. Therefore, it is first of all important to analyze whether such countries ensure an adequate level of protection.

IV. Protection of personal data in CPLP countries

The existence of a Data Protection Law and an independent administrative entity, with powers to guarantee internal compliance with international legal instruments of application in the field of personal data, are essential conditions for the recognition of an adequate level of protection of a State. third.

The Republic of Cape Verde and the Democratic Republic of São Tomé and Príncipe have personal data protection legislation and an independent administrative authority with powers to ensure its application. However, in the other CPLP countries there is no satisfactory personal data protection regime, either because there is no personal data protection law, or because, despite the law having been approved, there is no independent authority that guarantees its application, not ensuring an adequate level of data protection in the application domains of this project.

To this extent, the text of the Agreement must contain the essential rules in terms of data protection, obliging the Parties to comply with them, thus filling the deficiencies of the national legislation of the signatory countries and complying with the requirements of Portuguese legislation.

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V. Text of the proposed Agreement

Article 16 of the Agreement entitled “Protection of personal data” is the most important precept in terms of data protection, under which the parties undertake to guarantee the confidentiality of the personal data processed, protect them from any access or unauthorized communication, take steps to keep the information secure and up-to-date.

Although we consider the inclusion of this provision to be positive, it is clearly insufficient to safeguard the protection of citizens' personal data, taking into account that not all CPLP countries have adequate protection with regard to the data to be transmitted. Thus, the Agreement should contain specific rules aimed at ensuring compliance with European data protection legislation, starting with clarifying that the data processed must:

- 1) Be used only for the explicit purposes of this Agreement, and under no circumstances may they be treated in a way that is incompatible with those purposes at a later time;
- 2) Be adequate, relevant and not excessive in relation to the purposes for which they are collected, transferred and subsequently processed;
- 3) Be kept in such a way as to allow the identification of the persons concerned only for the period necessary for the pursuit of the purposes for which they were collected or for which they are subsequently processed, being eliminated after that period;
- 4) The transmission of data by the receiving State to third States always depends on the authorization of the State party that transferred them.

Express mention should also be made of the duty to guarantee the exercise of fundamental rights to information, access and rectification.

Furthermore, provision should be made for citizens to have recourse to administrative entities with competence for data protection, when they exist, and to the courts, in the event of any refusal to exercise their rights.

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SAW. conclusions

On the above grounds, the CNPD recommends reviewing Article 16 of the Draft Administrative Agreement for the Application of the Multilateral Convention on Social Security of the Community of Portuguese-Speaking Countries, through the insertion of specific provisions that establish limits to the processing of personal data as far as the principle of purpose and the principle of proportionality are concerned, and that expressly safeguard the fundamental rights of the holders.

Lisbon, 9 April 2019 Filipa Calvão (Chairman)