

NATIONAL DATA PROTECTION COMMUNITY

OPINION/2019/76

I. Order

The Office of the Secretary of State for Justice sent the National Data Protection Commission (CNPd), for an opinion, the draft Ordinance that makes the second amendment to Ordinance No. of proceedings in administrative district courts, tax courts, central administrative courts and the Supreme Administrative Court.

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 no. 4 of article 36, of Regulation (EU) 2106/679, of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of article 3, no. Article 4(2) and Article 6(1)(a) of Law No. 58/2019 of 8 August.

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

II. appreciation

Law no. 118/2019, of 17 September, introduced changes to the procedural regimes enshrined in the Code of Procedure in Administrative Courts and in the Code of Tax Procedure and Procedure, with a view to reinforcing the focus on electronic processing of administrative and tax proceedings. Among these changes, we highlight the obligation for written procedural acts to be carried out electronically, the revision of the regime for refusing the initial petition and the institution of electronic registration of judgments and final judgments. It is therefore imperative, with this draft Ordinance, to regulate the new solutions established in terms of electronic processing of administrative and tax proceedings.

Thus, the draft Ordinance under analysis amends articles 1, 10 and 23 of Ordinance No. 380/2017, of 19 December, and adds articles 10-A, 24. °-B, 27. °-A to this diploma.

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Article 1 regulates electronic processing in administrative and tax courts, now including the “practice of procedural acts and consultation of proceedings by public entities within the scope of the tax judicial process, under the terms of subparagraph e) of paragraph 1 of article 10 Article 110(5) Article 203(7) Article 208(1) Article 232(4)(c) ° and number 4 of article 278.0 of the Tax Procedure and Procedure Code».

In turn, article 23 stipulates that notifications between legal representatives and representatives in court are carried out by electronic transmission of data, through the computer system to support the activity of the administrative and tax courts that ensures, when any procedural document is presented. and upon indication of the agent or representative in notifying court, the notification by electronic transmission of data from the representative of the counterparty.

Regarding the amendments to the Ordinance, article 10-A lists the acts and communications that, within the scope of the tax process, are carried out between the tax administration services, the local peripheral service and the tax enforcement body and the tax courts, to which the provisions relating to access to the computer system supporting the activity of the administrative and tax courts, the registration of the representatives of the identified entities and their completeness and authenticity apply. It should be noted that these public entities can consult the processes in which they perform acts at <https://taf.mj.pt>

Finally, Article 27-A establishes that the computer system supporting the activity of administrative courts guarantees the recording of judgments and final judgments, allowing them to be consulted under the terms and for the purposes legally provided for.

The diploma under analysis does not raise particular issues of protection of personal data that have not already been highlighted by the CNPD in relation to previous legislative initiatives regarding the implementation of electronic proceedings in the courts. Opinion No. 40/2018, of September 10, 2018\ already listed some concerns that remain current regarding the diploma under analysis. Since then, 1

1 Available at [https://www.cnpd.pt/bin/decisooes/Par/40\\_40\\_2018.pdf](https://www.cnpd.pt/bin/decisooes/Par/40_40_2018.pdf)

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the concern regarding the security measures to be adopted to guarantee the effectiveness of the computer system supporting the activity of the administrative courts, and, above all, to protect the fundamental right to the protection of personal data, imposing compliance with the data controller and subcontractors the principle of data protection by design and by default pursuant to Article 25 of the GDPR.

Another concern results from the sensitivity of the information processed in the jurisdictional scope, despite of an administrative and fiscal nature, referring to the carrying out of an impact assessment on data protection under the terms of paragraphs 1 and b) of n. Article 35(3) of the GDPR. Note that paragraph 9 of Regulation No. 798/2018, of 30 November, of the CNPD<sup>2</sup>, concerning the list of processing of personal data subject to an impact assessment on data protection (list of treatments that also fulfill the assumptions of Article 35(1) of the GDPR), encompasses the processing of personal data provided for in Article 10 of the GDPR or data of a highly personal nature using new technologies or new use of existing technologies. However, taking into account that article 10 of the RGPD refers to the processing of personal data related to criminal convictions and offenses and that, under the terms of article 80 of the General Regulation on Tax Infractions, approved by Law no. 2001, of June 5th, the decisions on the application of fines and accessory sanctions can be appealed to a tax court of 1st instance, it would be useful if the draft ordinance was accompanied by such an assessment.

Finally, the CNPD warns once again<sup>3</sup> of the risks of the widespread use of the Digital Mobile Key and the Citizen's Card (through the Professional Attributes Certification System), to allow administrators or coordinators of

<sup>2</sup> Also available in

[https://www.cnpd.pt/bin/decisoos/regulamentos/regulamento\\_1\\_2018.pdf](https://www.cnpd.pt/bin/decisoos/regulamentos/regulamento_1_2018.pdf)

<sup>3</sup> Pay attention to the content of Opinions No. 37/2014 (available at

[https://www.cnpd.pt/bin/decisoos/par/40\\_37\\_2014.pdf](https://www.cnpd.pt/bin/decisoos/par/40_37_2014.pdf)); 61/2014

([https://www.cnpd.pt/bin/decisoos/par/40\\_61\\_2014.pdf](https://www.cnpd.pt/bin/decisoos/par/40_61_2014.pdf)); 66/2017

([https://www.cnpd.pt/bin/decisoos/par/40\\_66\\_2017.pdf](https://www.cnpd.pt/bin/decisoos/par/40_66_2017.pdf)) and 67/2017

([https://www.cnpd.pt/bin/decisoos/par/40\\_67\\_2017.pdf](https://www.cnpd.pt/bin/decisoos/par/40_67_2017.pdf)).

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public entities can access the computer system to support the activity of the courts, in this case, the administrative and tax courts.

Furthermore, the draft Ordinance does not raise reservations from the point of view of personal data protection.

### 3. Conclusion

On the grounds set out above, the CNPD reaffirms the usefulness of carrying out an impact assessment on data protection, pursuant to Article 1 and Article 35(3)(b) of the GDPR, as well as paragraph 9 of Regulation no. 798/2018, of the CNPD, in view of the risks inherent in new data processing resulting from the strengthening of electronic processing in administrative and tax courts.

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