

National Data Protection Commission

OPINION/2021/34

I. Order

1. The Secretary of State for the Presidency of the Council of Ministers asked the National Data Protection Commission (CNPD) to issue an opinion on the Draft Decree-Law amending Decree-Law No. 52/2020, of 11 August, regarding the STAYAWAY COVID system.

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 STAYAWAY COVID1 application is a contact-tracing application that aims to create an alert system for possible contagions of the COVID-19 disease, determined by the proximity and exposure time to a contact considered positive and which is presented as a complementary instrument and voluntary response to the pandemic situation and that contributes to the interruption of the virus transmission chains.

4. The draft diploma under analysis, as stated in its preamble, aims to speed up the process of obtaining and communicating the legitimization code (CL)2, allowing it to be generated by health professionals other than doctors, but also by fully automated means.

5. In fact, in paragraph 1 of article 1, under the heading Object, the reference to the regulation of the doctor's intervention is eliminated, adding that the diploma regulates the generation of the legitimization code of the STAYAWAY COVID system. Also in this sense, in Article 4 all references to a doctor are removed, which are replaced by health professionals or, in cases where

fully automated means are used, by the description of the operation.

1 The CNPD commented, pursuant to Article 36(1) of the GDPR, on the initial version of the STAYAWAY COVID system, in Deliberation/2020/277 (available at <https://www.cnpd.pt/decisions/deliberations>).

2 At the request of the CNPD, the impact assessment on data protection (version 2.1) was sent, which describes and analyzes the technological developments carried out in the STAYAWAY COVID system in order to allow the intended changes in the generation and communication of the legitimization codes.

Av.D. Carlos 1,134.1°

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt

0

PAR/2021/23 1 v.

CNPD

National Data Protection Commission

6. In paragraph 3 of article 4, a relevant change is introduced, from the perspective of the protection of personal data, insofar as, extending the intervention to other health professionals than just doctors and, consequently, creating If a new access profile is created that allows such an intervention, the knowledge of personal health data of holders infected with the SARS-CoV-2 virus will be extended, in qualitative and quantitative terms. The project refers to the Directorate-General for Health (DGS), as responsible for the treatment, the assignment of the new profile, as well as the definition of the intervention and interaction of professionals in the system and the way in which the respective authentication will operate.

7. However, the concept of health professionals, although widely used in legislation approving exceptional and temporary measures relating to the epidemiological situation of COVID 19, namely in Decree-Law No. 10-A/2020, of 13 March, it was not densified there, so one has to resort to the Basic Health Law to find the definition of this concept. In paragraph 1 of Base 28 of the Basic Health Law, approved in an annex to Law no. 95/2019, of 4 September, it is established that health professionals are

workers involved in actions whose main objective is the improvement of the health status of individuals or populations, including direct care providers and providers of support activities of health professionals.

8. It would be better, therefore, taking into account the diversity of professional categories in question, that the project defines which categories of health professionals are covered by the new access profile. Indeed, when evaluating the Trace COVID-193 tool under the responsibility of the DGS, the CNPD requested information on the criteria for granting access and login procedures for Trace COVID-19 users and although it had been informed that the criteria would be defined in a normative circular of the DGS⁴, the date of its publication was successively postponed and, as far as it is possible to ascertain, it has not yet been published.

9. In order to speed up the generation of CL, a paragraph 5 is added to article 4 of the project. This provides for the communication to the system of the date of the first symptoms or, when this is not known, the date of the laboratory test, and “in any case, identifiable data of the patient are not communicated”.

10. The draft also adds a new article, 4-A, which provides for the communication of CL using automated mechanisms. Despite this automatism in communication, the voluntary matrix for using the application is maintained, leaving the user the freedom to communicate to the system that it is positive.

3 The Trace COVID-19 platform aims to "manage patients in self-care and outpatient clinics" and corresponds to 'a support tool, for effective clinical follow-up and appropriate public health measures for patients with suspected or confirmed COVID-19.

19

4 Deliberation/2020/262, available at <https://www.cnpd.pt/decisooes/deliberacoes/>

Av. D. Carlos 1,134.1°

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt

PAR/2021/23

two

11. In order to understand the real dimension of CL communication through automated mechanisms, the CNPD resorted to the information provided by the impact assessment on data protection v2.1, henceforth AIPD. It clarifies that automatic processing triggered by a positive laboratory result from the SINAVE LAB application is introduced, or a medical notification originated in the SINAVE MED application for integration into the Trace COVID-19 system. , and checks if it has a registered mobile phone contact. Then, the Trace COVID-19 system authenticates itself with the Diagnosis Legitimation Service (SLD) and obtains the CL that is automatically transmitted by SMS to the holder's mobile number.

12. The automatic sending of the SMS with the CL is done using the mobile number available in the National User Registry (RNU) and, alternatively, the one entered in the Trace COVID-19 system. It was stated to the CNPD that the sending of SMS with the CL codes by the Trace COVID-19 platform will be carried out through an SMS gateway provided by the Administrative Modernization Agency, I.P. (LOVE). Nowhere in the AIPD is the way in which this transmission is made or the nature of the channel that establishes communication between the health systems and the gateway managed by the AMA is made explicit. Nothing, therefore, allows us to affirm the ability of that communication to maintain the protection of the data of the holders, nor the pseudonymized nature of access to the records of that communication, where there are direct relationships between mobile phone numbers and legitimation codes that certify users of mobile devices. as being COVID-19 positive. The entry of a new entity into the information circuit, an administrative entity that operates outside the health services, advises to reaffirm the pseudonymized nature of the use of STAYAWAY COVID.

13. The AIPD also does not include the communication mechanism between the various actors in the system: Trace COVID-19 and SLD, STAYAWAY COVID and SLD, and STAYAWAY COVID and the Diagnostic Publication Service. The document only mentions that these are secure channels with TLS5, but nothing is said about the protocols in which this communication is maintained, and there is no information about the security systems used to protect the infrastructure in order to mitigate attacks aimed at information security and, therefore, affect the protection of personal data.

14. Therefore, it is considered relevant that Article 6, on interoperability, be added, in addition to the duty to respect the principles and safeguards in terms of data protection, specific information security obligations.

5Transport Layer Security allows the creation of secure channels by end-to-end encryption.

Av. D. Carlos 1,134.1º

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

gerai@cnpd.pt

www.cnpd.pt

PAR/2021/23 2v.

National Data Protection Commission

III. Conclusion

15. Based on the observations and on the grounds set out above, the CNPD considers that:

- i. The project must define which categories of health professionals are covered by the new access profile;
- ii. In the article on the interoperability of the STAYAWAY COVID system with other systems and applications, the need to adopt security measures that protect the information and its pseudonymized nature is reinforced.

Lisbon, March 24, 2021

Filipa Calvão (President, who reported)

Av. D. Carlos 1,134.1º

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt