

/ NATIONAL DATA PROTECTION COMMISSION

OPINION/2020/81

I. Order

The Assembly of the Republic, through the Culture and Communication Commission, requested the National Data Protection Commission (CNPd) to pronounce on the Draft Law No. Directive (EU) 2018/1808 amending Directive 2010/13/EU on the coordination of certain laws, regulations and administrative provisions of the Member States relating to the provision of audiovisual media services (Audiovisual Media Services Directive) , to adapt it to changing market realities<sup>1</sup>.

The CNPD issues an opinion within the scope of its attributions and powers, as the national control authority for the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and paragraph 4 of article 36 of the Regulation (EU) 2016/679 of the Parliament and of the Council of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of article 3, paragraph 2 of article 4 .° and in paragraph a) of paragraph 1 of article 6, all of Law n.° 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

The proposed law under consideration here aims to transpose Directive (EU) 2018/1808 of the European Parliament and of the Council, of 14 November, into the domestic legal system, amending the Audiovisual Media Services Directive to adapt it to the evolution of market realities, making the 4th amendment to Law no. the amendment to Law No. 55/2012, of 6 September, which establishes the principles of State action in the context of the promotion, development and protection of the art of cinema and cinematographic and audiovisual activities.

In general terms, as can be seen from the explanatory memorandum, Directive (EU) 2018/1808 extends the current legal framework in this matter to video sharing platforms, reflecting the

<sup>1</sup> OJ L 303, of 28.11.2018, p. 69-92 <https://eur-lex.europa.eu/legal-content/PT/TXT/?uri=CELEX%3A32018L1808>

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current convergence between television, Internet services, technical progress and new viewing habits, particularly among the youngest.

In the transposition process, the following priorities are indicated: promotion of the production and dissemination of Portuguese works; deepening of competitive equity between the various types of services, as well as between national and foreign operators whose services are offered to the public located in Portuguese territory; improvement of financing conditions for national television services; increased levels of protection for minors and consumers; strengthening the accessibility of people with disabilities and other people with special needs to audiovisual media services; increasing media literacy skills; and prevention of hate speech, incitement to violence and terrorism.

It is precisely in the area of the protection of minors, in particular with regard to the introduction of mandatory technical features such as control mechanisms for the protection of minors against harmful content, that Law no. rule on the protection of minors' personal data.

In fact, Article 93-B is inserted, with the heading 'Protection of data concerning minors', which provides that '[t]he personal data of minors collected or generated by operators of television program services, by operators of on-demand audiovisual services or by providers of video-sharing platforms (...) may not be processed for commercial purposes, such as direct marketing, profiling or behavior-oriented advertising.'

This is the processing of personal data resulting from the new obligations imposed on operators in relation to television programming and on-demand audiovisual services, contained in the new wording of paragraphs 3, 5 and 6 of article 27 of Law no. 27/2007, which imply prohibiting or conditioning access by minors to certain contents, as well as the mandatory features, provided for in paragraphs e) and f) of article 69-C, added to the same law, to verify the age of users of video-sharing platforms and for parental control of content "likely to harm the physical, mental or moral development of minors".

This rule of article 93-B, which prohibits the use of personal data of minors that may be collected in the contexts described above for the purposes of direct marketing, including the definition of profiles and the consequent behavioral marketing, is modeled on the

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legal provision set out in paragraph 2 of article 6-A and in paragraphs f) and h) of paragraph 3 of article 28-B of the “Audiovisual Media Services” Directive, in its current wording.

Recital 21 of the Directive justifies this prohibition on the use of minors' personal data for these purposes, as the GDPR recognizes that children must be given specific protection in terms of the processing of their personal data. In this sense, since the mechanisms to be adopted by media service providers are intended to protect children, “personal data of minors processed within the scope of technical measures to protect children should not be used for commercial purposes”.

In this way, insofar as the introduction of this provision, on the one hand, fully transposes the content of the directive's rule, and, on the other hand, in fact offers increased protection to the personal data of minors, preventing the creation of consumption profiles and from other behavioral aspects, the CNPD considers this to be a significant guarantee for the protection of children's private and family life.

In short, from the point of view of the protection of personal data, in particular of minors, this rule constitutes a safeguard measure, the scope of the prohibition of the possible reuse of personal data collected or generated to comply with legal obligations contained in the new framework being evident. cool.

### III. Conclusion

Based on the above, the CNPD considers that there is a full alignment of article 93-B, which is intended to be added to Law no. this is an important safeguard for the protection of the private and family life of minors with the restriction imposed on the processing of their personal data for commercial purposes, including the definition of profiles.

Approved at the meeting of July 21, 2020

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