

National Data Protection Commission

OPINION/2022/90

I. Order

1.0 Secretary of State for the Presidency of the Council of Ministers asked the National Data Protection Commission (CNPD) to issue an opinion on Draft Law No. 2022-2026».

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, subparagraph b) of Article 58(3) and Article 36(4), all of Regulation (EU) 2016/679, of 27 April 2016 - General Data Protection Regulation (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 No. 58/2019, of 8 of August, which implements the GDPR in the domestic legal order.

3. The National Housing Plan (PNH), provided for in article 17 of the Basic Housing Law (Law No. 83/2017, of 3 September), is the programmatic instrument that establishes the objectives, programs and measures of the national housing policy.

4. Under the terms of paragraph 2 of article 17 of that Law, the PNH is approved by the Assembly of the Republic on a proposal

5. The Bill submitted to the CNPD for an opinion (hereinafter the Proposal), establishes that Program for the period 2022-2026.

6. It is foreseen, in the Proposal, that the monitoring and execution of the intervention axes of that program is the responsibility of the Government and that, in order to increase the housing responses foreseen in these Intervention axes, there is the collaboration of the following promoting entities: local administration with competence in housing matters; local authorities and inter-municipal entities, entities from the social, cooperative and collaborative sector and entities from the private sector (Article 4(1) and (2)).

7. The Proposal also establishes that, through the IHRU, I.P., the Government takes the necessary steps to ensure the follow-up, monitoring and evaluation of the PNH, as well as for the preparation of the Annual Report on Housing (Nos. article 5).

II. Analysis

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8. In order to fulfill the aforementioned obligations and, in particular, for the production and reporting of information on housing, housing leases and urban rehabilitation, it is established that the IHRU, i.P. promote surveys in conjunction with the National Statistics Institute (Article 5(4)(a)).

9. Also under the terms of that article, the IHRU, I.P. may "request and receive the data it deems necessary for the purpose of producing the information from other entities and services of the direct or indirect administration of the State, in particular the Tax and Customs Authority, under subparagraph b) of no. of article 64 of the General Tax Law' (paragraph b)).

10. The Proposal does not specify what information can be requested from those entities.

11. In particular, it does not indicate what information can be requested from the Tax and Customs Authority, and the express reference to paragraph b) of article 64 of the General Tax Law does not provide assistance in this regard.

12. In fact, that regulation of the General Tax Law is limited to providing that the duty of confidentiality of the Tax and Customs Authority ceases in the event of "[c]ooperation of the tax administration with other public entities to the extent of its powers", cooperation that , as for the PNH, is now provided for in the Proposal under analysis.

13. If the data requested from the National Statistics Institute are, by their very nature, at least pseudonymized, the same is certainly not the case with the information held by the Tax Authority and

14. Furthermore, although nothing is mentioned regarding the possible processing of personal data within the scope of the PNH, it is inferred, from the combination of the regime provided for in the Basic Housing Law with the text of the Proposal, as well as in the express reference that makes Law No. 58/2019, of August 8, that it is intended that IHRU, I.P. will process personal data.

15. In this regard, it is strange that only Law No. 58/2019 of 8 August is considered and not also the GDPR, which establishes the general regime in terms of data protection.

16. The wording contained in the Proposal regarding the personal data that will be processed by IHRU, I.P. for the fulfillment of its obligations is too vague and imprecise, and therefore cannot constitute a basis of lawfulness.

17. Bearing in mind that the basis for the lawfulness of the processing is the fulfillment of a legal obligation to which the controller is obliged, it is necessary to consider, in the Proposal, all the elements referred to in paragraph 3 of article 6. ° of the GDPR.

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18. In particular, the Proposal does not make it possible to know which personal data are transmitted to IHRU, I.P. and object of treatment.

19. However, it is not enough to provide that the data to be transmitted to the IHRU, I.P. are those that this institute deems necessary, and it is necessary to specify specifically which data are being processed, which, under the terms of subparagraph c) of paragraph 1 of article 5 of the RGPD, must not only be necessary, but adequate and not excessive for the fulfillment of the purposes of the treatment, thus complying with the principle of minimization and the need to know.

20. Likewise, the way in which the communication of information to the IHRU, I.P. is processed is not foreseen, which are the information security guarantees, as well as the data retention period.

21. And this, notwithstanding the necessary regulation of the regime provided for in the Proposal, which must also be submitted to the CNPD for an opinion.

22. The CNPD cannot, however, fail to point out that the fact that this Draft Law is not supported by an impact study on the protection of personal data - which is, remember, mandatory under the terms of no. 4 of article 18 of Law No. 43/2004, of 18 August (Law on the Organization and Operation of the CNPD), introduced by Law No. 58/2018, of 8 August - compromises a thorough assessment by of the CNPD.

III. Conclusion

On the grounds set out above, the CNPD recommends densifying the text of the Proposal, in order to ensure that data processing complies with the legislation applicable in this area.

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