

National Data Protection Commission

OPINION/2021/86

I. Order

1. The Secretary of State for the Presidency of the Council of Ministers requested the CNPD to pronounce on the proposal for an authorized decree-law that ensures the implementation in the domestic legal order of Regulation (EU) 2017/2394¹, on cooperation between responsible national authorities enforcement of consumer protection legislation.

2. The CNPD issues an opinion within the scope of its powers 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 and by paragraph 4 of article 36 of Regulation (EU) 2016/679, of 27 April

2016 - General Data Protection Regulation (RGPD), in conjunction with the provisions of article 3, in paragraph 2 of article 4, and in paragraph a) of paragraph 1 of article 6, all of Law n.º 58/2019, of 8 August.

3. Regulation (EU) 2017/2394 has improved the mechanisms of administrative cooperation, when there are cross-border infringements, to make the application of consumer legislation more effective, in a logic of strengthening consumer protection and trust in the digital market. The proposed decree-law (hereinafter, "Proposal"), under consideration here, ensures the implementation of this new regulation.

4. The Proposal designates the national authorities competent to apply the legislation listed in the annex to this Proposal, and confers the respective powers to apply the Regulation. It also identifies the Directorate-General for Consumers as the Single Liaison Office with the European Commission and the single liaison offices of other Member States and the competent authorities.

5. The Proposal designates the entities competent to issue external alerts. It also imposes a duty of cooperation between the competent national authorities and extends the powers of the authorities to national infringements of consumer protection legislation contained in the annex to Regulation (EU) 2017/2394.

¹ Regulation (EU) No. 2017/2394, of the European Parliament and of the Council, of 12 December 2017 on cooperation

between national authorities responsible for enforcing consumer protection legislation and repealing Regulation (EC) No.

2006/2004 (JO L345. 00 12/27/2017)

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II. Analysis

6. Through Law No. 26/2021, of 17 May, the Government was authorized to establish the rules for implementing Regulation (EU) 2017/2394, considering that this Proposal is within the limits defined by the law of legislative authorization, as to its object, meaning and extension.

7. With relevance to the protection of personal data, and following the administrative cooperation framework that already exists under Regulation (EC) 2006/2004 now repealed, the designation of the CNPD as one of the competent national authorities within the scope of of Regulation (EU) 2017/2394, by virtue of its legal powers to control compliance with the rules of national legislation that transposes Directive 2002/58/EC, on privacy in electronic communications, through Law No. 41/2004 , of 18 August, in its current wording.

8. The Proposal, in its article 13, grants the CNPD the powers provided for in paragraphs a), b) and d) to h) of paragraph 4 of article 9 of Regulation (EU) 2017/2394, whose exercise complies with the provisions of article 10 of the aforementioned regulation.

9. Among these powers, “the power to seek or accept from the professional responsible for the offense covered by this regulation commitments in order to cease the infringement” (cf. point b) of paragraph 4 of article 9.), and which is regulated in more detail in Article 20 of the Proposal. 'Professional' means, as defined in Article 3(11) of the Regulation, 'any natural or legal person, public or private, acting, including through another person acting in its name or on its behalf, within the scope of its commercial, industrial, artisanal or professional activity'.

10. Pursuant to Article 20 of the Proposal, the competent national authority may propose or accept commitments from the

trader aimed at the cessation of the infringement and, where applicable, the reparation of damages or other measures for the benefit of consumers. The commitments reached are written down by the national authority and a maximum period is set for their execution. The Proposal also provides for the possibility of publicizing commitments, orders issued under the Regulation and final decisions, including the identification of the offender.

11. In general, the Proposal is limited to defining what Regulation (EU) 2017/2394 is incumbent on the Member States to regulate, also taking into account a pre-defined list of consumer protection legislation that is subject to these cross-border cooperation mechanisms, so the CNPD has no comments to make on this matter.

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12. As for the extension to national infringements of the legislation adopted under various instruments of Union law in the field of consumer protection, of the same regime applicable to cross-border infringements, the CNPD believes that such scope is essential for a consistent application of the law and the uniform and equitable protection of consumer rights.

III. Conclusion

13. The CNPD considers that the Proposal under consideration here follows the framework defined by the legislative authorization law - Law No. 26/2021, of 18 May.

14. The CNPD understands that the Proposal is limited to implementing what Regulation (EU) 2017/2394 differs for the Member States to regulate, with no repetition of rules or the introduction of national provisions that, in some way, may violate provided for in the Regulation, thus ensuring its consistent application.

15. The CNPD considers it essential that the powers conferred on the competent national authorities for offenses of a cross-border nature are applied in the same way to offenses of a national scope, in order to guarantee a coherent and equitable application of consumer protection legislation.

Approved at the meeting of June 29, 2021

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