

I. Request

1. On February 22, 2023, the Directorate-General for Consumers requested the National Data Protection Commission (CNPD) to issue an opinion on the draft Ordinance that makes the first amendment to Ordinance No. 201-A/2017, of 30 June, which approved the model, edition, prices, supply and distribution of the complaints book, in physical and electronic formats, as well as the functionalities of the digital platform that provides the electronic format of the complaints book.

2. The CNPD issues an opinion within the scope of its attributions and competences, as an independent administrative authority with authoritative powers to control the processing of personal data, conferred by paragraph c) of paragraph 1 of article 57, paragraph b) of paragraph 3 of article 58 and paragraph 4 of article 36, all of Regulation (EU) 2016/679, of April 27, 2016 - General Regulation on Data Protection (hereinafter, GDPR), in conjunction with the provisions of Article 3, Article 4(2) and Article 6(1)(a), all of Law No. 58/2019, of August 8, which implements the GDPR in the internal legal order.

II. appreciation

3. Essentially, this Draft Ordinance aims to introduce changes that accompany technological development, in particular taking into account «[...] not only the development of the new image of the platform - aligning it with the image of the Book of Complaints in the physical format -, but also the need to introduce improvements in the Book model and in the sign, which accompanies the physical format of the Book [...]»e«[...] in order to facilitate the correct identification of the economic operator , this Ordinance also approves a label identifying the economic operator with a QR code that can be used by suppliers of goods and service providers».

4. The provisions introduced by the Project in the articles of Ordinance No. 201-A/2017 do not raise reservations from the perspective of their compliance with the personal data protection regime. However, in the attachments now presented, the requirement to introduce the tax identification number (NIF) in the complaint forms and the request for information is repeated, to which the same requirement is now added in the compliment or suggestion form (cf. point a) of paragraph 2 of Annexes II,

IV and V).

5. As the CNPD already had the opportunity to highlight in its Opinion No. 42/2017, of June 28¹, such a requirement is not supported by any legal provision and is in clear contradiction with the principle of

¹ Accessible at <https://www.cnpd.pt/decisooes/historico-de-decisooes/?year=2017&type=4&ent=>

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proportionality and the principle of minimization of personal data, enshrined in Article 5(1)(c) of the RGPD.

6. In fact, what paragraph a) of paragraph 1 of article 4 of Decree-Law No. 156/2005, of September 15, in the wording given by Decree-Law No. 74/2017, of June 21, provides for and requires the identification of the claimant, therefore, for this purpose, the name and type of civil identification document and the respective number are justified and sufficient.

7. Given that the NIF data has the legally defined purpose of identifying citizens before the tax administration, as this is not an operation subject to taxation or involving the payment of any amount, that data is manifestly unnecessary for the purpose of process a complaint or request for information. For the purpose of presenting compliments or suggestions, the requirement of identification through the NIF is even absurd.

8. And it cannot be the fact that the current complaint book contains the NIF field that justifies its maintenance, especially at a time when technological evolution is invoked to correct and improve the system created regarding the collection, processing and response to complaints and information requests. If in this, as in other domains, there is a habit or tradition of imposing the processing of NIF data with the purpose of identifying a person before any organization, public or private, due to the alleged lower probability of error in their identification, it is difficult to understand that, in the current state of technological evolution, a certain pragmatic complacency prevails over the strength of legal principles.

9. Thus, the CNPD reiterates the recommendation that the TIN data in subparagraph aj) of paragraph 2 of Annexes II, IV and V be deleted, due to its manifest lack of need for the purpose of data processing, taking into account that the other data provided therein are sufficient for the identification of the complaining citizen, requesting information, praising or proposing a suggestion.

III.

III. Conclusion

10. On the grounds set out above, the CNPD recommends the elimination of the given tax identification number (NIF) in the complaint forms, the request for information and the compliment or suggestion, due to its manifest lack of need for the purpose of identification, in gross violation Article 5(1)(c) of the GDPR.

Lisbon, March 2, 2023

ipa Calvão (Chairman, who reported)