

National Data Protection Commission

OPINION/2021/22

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 Regulatory Decree No. 641/XXII/2020 (hereinafter referred to as Project), which establishes the Animal Ombudsman with the mission of guaranteeing the defense and promotion of animal welfare.

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 draft Regulatory Decree creates the figure of the animal provider, a singular body endowed with administrative autonomy, whose mission is, under the terms of paragraphs 1 and 2 of article 2, the defense and promotion of welfare and the promotion of a more effective and coordinated action by the State in this domain, in relation to integrated services in the sphere of Public Administration.

4. In order to carry out this mission, Article 3 sets out the powers of the animal provider. Although only point g) expressly refers to the protection of personal data, points a) and b) also establish powers that may require the collection and processing of personal data, which is why this analysis is also justified.

5. First of all, with regard to the powers enshrined in paragraphs a) and b) of the aforementioned article 3, they also need to be densified in terms of data protection. They establish that it is up to the animal provider to "receive complaints and suggestions regarding the performance of public authorities in terms of animal welfare" and "[forward to the competent authorities information he receives about situations that put animal welfare at risk" .

6. Now, with regard to the submission of complaints, the project is limited to indicating, in article 8, under the heading Publicity and access, the means through which complaints must be presented - on the respective website and , until the animal provider's website becomes operational, on the website

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of the General Secretariat of the Ministry of the Environment, being totally silent as to elements that make it possible to know if, and to what extent, there may be processing of personal data.

7. Thus, except in the case of complaints being submitted anonymously and without it being possible to determine the author, a situation that does not seem plausible, the text must, in compliance with paragraph 2 and paragraph 3 of article 6. RGPD, expressly provide for specific requirements and other measures to ensure the lawfulness and fairness of the treatment, as well as the type of data being processed, the data subjects in question, the entities to whom the data may be communicated and for what effects and retention periods.

8. Note that the aforementioned paragraph b) of article 3 refers that the animal provider forwards to the competent authorities [the] information he receives about situations that put animal welfare at risk, without specifying the content. this information, so it is desirable to establish the conditions for this forwarding in terms of personal data, with respect for the principles and rights enshrined in the RGPD and, specifically, the principle of data minimization enshrined in subparagraph c) of paragraph 1 of article 5 . of the GDPR.

9. Furthermore, in paragraph g), the animal provider is empowered to "[develop studies on animal welfare based on data collected from the competent authorities for its production, in compliance with the Regulation (EU)2016/679, of the European Parliament and of the Council, of 27 April 2016, on the protection of individuals with regard to the processing of personal data and the free movement of such data".

10. However, considering the text of the project, it is not possible to reach the extent to which personal data may be processed

at this level. Indeed, for the development of studies, the use of identified or identifiable personal data does not seem necessary. However, if such treatment is carried out, the technique used to refer to the GDPR proves to be inadequate. On the one hand, because it has no useful effect, since such a regime would always have to be convened regardless of this reference, as well as Law No. does not state. On the other hand, because it is insufficient, since there is, in the text of the project, any element that allows identifying to what extent, for the accomplishment of these studies, the processing of personal data may be at stake. If it exists, the precept of greater densification will be lacking, in the exact terms mentioned above.

11. It should also be noted that Law No. 43/2004, of August 18, as amended by Law No. 58/2019, of August 8, now determines in No. 4 of art. 18 0 that "requests for an opinion on legal and regulatory provisions in preparation must be sent to the CNPD by the holder of the body

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with legislative or regulatory power, instructed with the respective impact study on data protection" therefore, future projects that may be presented to the CNPD, for the issuance of an opinion, must come with the respective impact study.

III. Conclusion

12. Based on the reasons set out above, the CNPD recommends densifying the text of the project in the sense indicated above, in order to ensure the compliance of the processing of personal data with the legislation applicable in this area.

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