

/-

## NATIONAL DATA PROTECTION COMMISSION

OPINION/2019/80

### I. Order

The Ministry of Foreign Affairs, through the Directorate-General for European Affairs, asked the National Data Protection Commission (CNPd) to comment on the Agreement on investment protection between the European Union and its Member States, for on the one hand, and the Socialist Republic of Vietnam, on the other hand (hereinafter 'the Agreement'), signed in Hanoi on 30 June 2019.

The request made and the opinion issued are the result of the attributions and powers of the CNPD, as the national authority to control the processing of personal data, conferred by paragraph c) of paragraph 1 of article 57 and paragraph 0 4 of article 36 . of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of article 3, no. 2 of article 4 and paragraph a) of paragraph 1 of article 6, all of Law n.º 58/2019, of 8 August.

The assessment of the CNPD is limited to the rules that provide for or imply processing of personal data.

read Agreement Objectives

The Agreement under consideration assumes a generic regulatory content with the aim of “strengthening investment relations between the Parties” (cf. article 1.1), strengthening their economic, commercial and investment relations in terms of their economic, social and environmental.

In addition to the Agreement itself, the respective annexes are sent, which form an integral part of it, including those relating to the resolution of disputes and the organization and functioning of the courts, which include procedural and procedural rules, as well as rules concerning the selection of natural persons to integrate the body of judges of these courts, and also the rules regarding the parties involved in arbitration proceedings and the other parties involved in the judicial proceedings (cf. Annexes 7 to 9 and 11).

AV. D. CARLOS I, 134-Io I 1200-651 LISBON | WWW.CNPD.PT | TEL: +351 213 928 400 | FAX: +351 213 976 832

Process PAR/2019/63 j 1v.

The execution of such provisions necessarily implies the processing of personal data of the different actors in these processes (relating to their identification, declared property or relational situations or that may reveal conflicts of interest of candidates to the courts, etc.), in addition to the execution of other provisions contained in the Agreement and its annexes, such as those relating to investment or expropriation, insofar as the interested persons are natural persons.

However, such processing of personal data is not regulated in the Agreement, and the principles governing such processing are not established there, nor in the Annexes, nor do they provide for guarantees of the rights of data subjects.

In fact, it is only safeguarded, in subparagraph ii) of subparagraph e) of article 4.6 of the text of the Agreement, that the Parties may adopt measures regarding the protection of the privacy of individuals in relation to the processing and disclosure of personal data and the protection of the confidentiality of personal account records of its investors, if necessary to ensure compliance with the legal provisions in force in the respective national legal systems. And in article 4.12, under the heading Disclosure of information, it is determined that no provision of the Agreement may be understood to oblige any of the parties to make available confidential information whose disclosure may impede the execution of the law or in any other way be contrary to the interest public, or that could harm the legitimate commercial interests of certain companies, public or private.

Given that the Portuguese Republic is obliged to comply with national and European rules on data protection, also with regard to international transfers of data to a third country, it is essential to assess whether the Socialist Republic of Vietnam guarantees a level of protection appropriate, in line with Article 44 of the GDPR.

In this regard, it should be noted that in the field of data protection legal instruments, the Socialist Republic of Vietnam has not acceded to Convention No. 108 of the Council of Europe<sup>1</sup>, open to countries not belonging to the Council of Europe, nor is it in

1 Convention for the Protection of Persons with regard to the Automated Processing of Personal Data passed on January 28, 1981, was approved for ratification by the Resolution of the Assembly of

Process PAR/2019/63 2

#### NATIONAL DATA PROTECTION COMMISSION

a data protection law in force in the country. It is effectively foreseen, in that State, the approval of rules that regulate the security of information and electronic commerce covering the matter of protection of personal data. However, at the moment it is not possible to say that Vietnam has an adequate level of protection of personal data.

To that extent, it would be necessary for that State to be bound to respect a set of principles and measures that guarantee the

subjective legal position of data subjects, within the scope of the execution of this international agreement.

However, as this Agreement appears to have characteristics similar to a framework agreement, the CNPD admits that this is not the appropriate instrument to regulate the processing of personal data that may result from its execution.

Thus, the CNPD understands that the materialization of cooperation actions under this Agreement, which imply the processing of personal data, must be regulated through specific bilateral or multilateral agreements, which contain all the necessary provisions on the protection of personal data.

Such agreements shall be subject to the CNPD's assessment, whether negotiated bilaterally or through the Union.

Approved at the plenary meeting of November 26, 2019

Filipa Calvão (President)

Republic No. 23/93, of 9 July, and ratified by Decree of the President of the Republic No. 21/93, on the same date.

AV. D. CARLOS I, 134 - r | 1200-651 LISBON | WWW.CNPD.PT | TEU+351 213 928 400 | FAX: +351 213 976 832