

CNPD

National Data Protection Commission

OPINION/2021/138

I. Report

1. The Secretary of State for the Presidency of the Council of Ministers submitted to the National Data Protection Commission (hereinafter CNPD), for an opinion, the draft Decree-Law that establishes the requirements for access and exercise of the activity of technicians of the Data Protection System. Energy Certification of Buildings - MAAC (Reg. DL 1214/XXII/2021), which repeals Law No. 58/2013, of 20 August, in its current wording, and Ordinance No. 66/2014, of 12 March. It also makes the first amendment to Decree-Law No. 101-D/2020, of 7 December.

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. Decree-Law No. 101-D/2020, of 7 December, established the requirements applicable to the design and renovation of buildings, transposing Directive (EU) 2018/844 of the European Parliament into the national legal system and of the Council of 30 May 2018 amending Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (EPBD Directive).

4. Under the terms of the preamble, with the aforementioned Decree-Law, the tasks and obligations related to the aforementioned activities of certification of energy performance and installation and maintenance of buildings and systems assume a higher degree of rigor and technical complexity, to which are added new tasks and obligations related to the management of energy consumption in buildings and periodic inspection of certain technical systems covered by the Energy

Certification System (SCE).

5. Therefore, the requirements for access and exercise of the activity of SCE technicians provided for in Law no. the transposition of the EPBD Directive into the domestic legal order.

6. Article 9 of the project under analysis makes the access and exercise of activity of qualified SCE technicians dependent on obtaining a professional title in a certain category, with registration with the Energy Agency (ADENE).

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PAR/2021/107

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7. The instruction for the application for the issuance of a professional title and respective registration includes the identification of the interested party, accompanied by proof of enrollment in the respective public association and the qualification diploma or certificate of qualifications, as well as the professional curriculum and the application for admission. to the examination under the terms of paragraph 2 of article 9 of the diploma in question.

8. However, the project is silent as to how the aforementioned request is made. Thus, if the same is sent through a platform, you must ensure that the necessary technical and organizational security measures are implemented, in compliance with the provisions of subparagraph f) of paragraph 1 of article 5 of the RGPD.

9. It should also be noted that the item does not define which identification data are required, so, taking into account the principle of transparency provided for in subparagraph a) of paragraph 1 of article 5 of the RGPD, it is suggested its densification, listing the categories of personal data in question.

10. In turn, paragraph 9 of article 9 of the project provides that ADENE¹ makes available on the SCE Portal the scholarship of SCE technicians operating in national territory, whose treatment, access and research by the public must meet the requirements of the GDPR. It is important, first of all, to ensure that the personal data made available as a result of the search by the public are only those necessary for the intended purpose.

11. On the other hand, the option of establishing that these specific treatments must comply with the legal regime enshrined in

the RGPD, leaving others out, may allow the presumption that the other processing of personal data provided for or arising from this Project are not subject to the RGPD .

12. In order to maintain a provision with this type of content, the CNPD recommends, rather, the autonomous forecast of the need for all data processing resulting from the application of this law to comply with the requirements of the RGPD.

13. Pursuant to article 16.02, with the exception of administrative offences, all requests, communications and notifications between SCE technicians, other technicians, owners and competent authorities are carried out on the SCE Portal, in accordance with the procedures indicated therein, integrated in the electronic one-stop shop for services referred to in article 6 of Decree-Law no. 92/2010, of 26 July, in its current wording, accessible through Portugal ePortugal.gov.pt.

1 It should be noted that under the terms of subparagraph c) of paragraph 2 of article 26 of Decree-Law no. 101-D/2020, of 7 December, ADENE is responsible for managing the central register of energy certificates in the Portal SCE as well as the rest of the information produced.

2 Which refers to article 42 of Decree-Law no. 101-D/2020, of 7 December, now amended by article 15 of the project.

PAR/2021/107

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National Data Protection Commission

14. It should be noted that, under the terms of paragraph 2 of article 42 of Decree-Law no. 101-D/2020, of 7 December³, within the scope of the procedures provided for in the previous number, it must be possible to use of secure authentication mechanisms and qualified electronic signatures, namely those contained in the citizen card and Digital Mobile Key using the Professional Attributes Certification system, as well as electronic identification means issued in other Member States recognized for this purpose, under the terms of Article 6 of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014. It is clear that there must be an alternative. The CNPD recalls, once again⁴, that the use by professionals of the Digital Mobile Key and the Citizen Card (through the Professional Attributes Certification System) calls for the existence of alternative means of authentication so that it is possible to affirm a manifestation of free will of its use, under the terms of the legal diplomas that provide for and regulate these authentication tools.

15. In view of the various data processing identified above, it should be noted that the Project does not contain the necessary

information on security measures to be adopted in order to comply with the provisions of paragraph 1 f) of article 5 of the GDPR, nor on data retention periods, as follows from the principle of limitation of data retention provided for in subparagraph e) of paragraph 1 of the same article.

16. Furthermore, the draft Decree-Law does not raise reservations from the point of view of personal data protection.

III. Conclusion

17. Thus, on the grounds set out above, the CNPD recommends:

The. The densification of paragraph 2 of article 9 of the Draft Decree-Law, listing the applicants' personal identification data;

B. The possible introduction of an autonomous item that highlights the need for all data processing resulting from the application of this law to comply with the requirements of the RGPD and provide for security measures to be adopted and data retention periods, as well as the rights of data subjects.

3 Diploma on which the CNPD was not heard within the scope of the competence conferred by subparagraph c) of paragraph 1 of article 57, in conjunction with subparagraph b) of paragraph 3 of article 58, and with the paragraph 4 of article 36, all of the GDPR.

4 Pay attention to the content of Opinions No. 37/2014 (available at https://www.cnpd.pt/bin/decisoos/par/40_37_2014.pdf)

61/2014 (https://www.cnpd.pt/bin/decisoos/par/61_2014.pdf): 66/2017 (https://www.cnpd.pt/bin/decisoos/Dar/40_66_2017.pdf)

and 67/2017 (https://www.cnpd.pt/bin/decisoos/par/40_67_2017.pdf.)

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PAR/2021/107

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Approved at the October 19, 2021 session

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