

I. Order

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 creates an online registration regime for permanent representations with simultaneous appointment of the representative, of companies headquartered abroad, called "online branch". This draft decree-law (Draft) partially transposes Directive (EU) 2019/1151 of the European Parliament and of the Council, of 20 June 2019, into the domestic legal order, amending Directive (EU) 2017/1132 in concerning the use of digital tools and procedures in the field of company law.
2. This Project also introduces amendments to the Commercial Companies Code approved by Decree-Law No. 262/86, of 2 September, to the Commercial Registration Code approved by Decree-Law No. 403/86, of 3 September September, to the Fee Regulation for Registries and Notaries approved by Decree-Law no. 322-A/2001, of 14 December, to Decree-Law no. » and Decree-Law no. 1151, namely with regard to the online constitution of companies already implemented.
3. On the other hand, in order to implement the Simplex measure «Electronic address in the certificate», the diploma accepts the requirement of a declaration of acceptance of the position of management and administration and establishes the possibility for interested parties, at the time of the request for registration of facts concerning the company, provide e-mail addresses so that they are included in the register and, subsequently, can be known through the registration certificate.
4. 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.

Av.D. Carlos 1,134.1st

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt

PAR/2021/113

1v.

II. Analysis

5. In order to partially comply with Directive 2019/1151, the draft decree-law creates an online registration regime for permanent representations of limited liability companies headquartered abroad, which covers those headquartered in another Member State of the European Union, called "online branch" through a website to be defined by order of the member of the Government responsible for the area of justice.

6. From the point of view of data protection, the provisions of subparagraph a) of paragraph 2 of article 3, concerning documents proving the legitimacy of the interested parties for the act.

7. It should be noted that the item does not define which supporting documents are in question, nor, consequently, the necessary identification data. It is true that article 17-A of Decree-Law no. 125/2006, of 29 June, as amended, provides in subparagraph c) of no. incorporation of companies under the regime established by the Project, covering the requirements relating to the identification of persons. However, this Project does not specify this information, so, taking into account the principle of transparency provided for in subparagraph a) of paragraph 1 of article 5 of the RGPD, its densification is suggested, listing the categories of personal data in question .

8. In turn, article 7 refers to the ordinance of the member of the Government responsible for the area of Justice, the regulation of the address, functionalities and operating rules of the website referred to in article 2, that is, the registration online of permanent representations of limited liability companies headquartered abroad, and the requirements and conditions for the use of authentication and electronic signature in the indication of data and in the delivery of documents on the aforementioned website.

9. The CNPD recommends the reformulation of this section in order to determine that the new website must be developed following the technical requirements of Resolution of the Council of Ministers No. 41/2018, of March 28, 2018¹.

10. It appears from paragraph b) of the same article 7 that the online request, provided for in article 3 of the Project, will comprise electronic authentication carried out through a qualified digital certificate, filling in an electronic form and delivery of the necessary documents to the registration. However, considering that the forms and documents will contain personal data, as they include identification information, electronic signature and data of the representatives when they are natural persons (cf. point d) of article 3 of the

¹ <https://dre.pt/dre/detalhe/resolucao-conselho-Ministros/41-2018-n4937034>

PAR/2021/113

two

1

National Data Protection Commission

Project) it is important that appropriate technical and organizational measures are defined to guarantee the security of this information, taking into account its electronic support, in the light of the provisions of subparagraph f) of paragraph 1 of article 5, and subparagraphs a), b) and c) of paragraph 1 of article 32, both of the RGPD, in compliance with the principles of completeness and confidentiality.

r

11. Finally, it should be noted that the aforementioned ordinance must be subject to consideration by the CNPD, within the scope of the competence conferred by subparagraph c) of paragraph 1 of article 57, in conjunction with subparagraph b) of n. 3 of article 58, and with paragraph 4 of article 36, all of the GDPR in conjunction with the provisions of paragraph aj of paragraph 1 of article 6 of Law 58/2019, of 8 of August, which executes this legal diploma in the domestic legal order.

12. With regard to changes introduced to other legal instruments, namely the Commercial Companies Code, paragraph 3 of article 252, concerning managers, and paragraph 2 of article 391, concerning directors, now enshrine, for the purposes of registration, the obligation to present a declaration of acceptance of the designation and a declaration that they are not aware of circumstances that may inhibit them from occupying the position. Note that the amendment is made in the same direction, for registration of the designation of representatives, in paragraph 3 of article 40 of the Commercial Registration Code and in

Decree-Law no. 125/2006, of 29 June , amending subparagraph d) of paragraph 4 of article 6 of this legal diploma.

13. Also noteworthy is the amendment to paragraph 2 of article 78-D of this last diploma, carried out by article 9 of the Project, with the data collected now covering the identification document number and email when provided . Such data are necessary for the purpose in question in compliance with the principle of data minimization enshrined in Article 5(1)(c) of the GDPR.

14. The Bill also introduces changes to Decree-Law no. 125/2006, of 29 June, of which the introduction of a new paragraph 4 of article 5. citizens of other Member States of the European Union, the use of electronic identification means issued in other Member States is permissible provided that they are recognized for the purposes of cross-border authentication in accordance with Article 6 of Regulation (EU) 910/2014 of the European Parliament and of the Council, of July 23, 2014, and of the Ordinance referred to in paragraph 1.

15. Finally, a note regarding the amendment to article 6 of Decree-Law No. 24/2019, of 1 February, made by article 12 of the Project. Paragraph 1 provides that "The national commercial registry notifies, through the Interconnection System, the competent registry of the Member State where the permanent representation of a Portuguese company is registered", about registered changes to the articles of association, facts that determine the opening and the closing of any liquidation or insolvency proceedings, and cancellation of the company's registration. Likewise, pursuant to paragraph 3 'the commercial register nac/ona/

geral@cnpd.pt

www.cnpd.pt

Av. D. Carlos 1,134,10

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

PAR/2021/113

2v.

/

communicates, through the Interconnection System, to the competent registry of the Member State where the represented company is registered the registration of creation and the registration of closure of the permanent representation».

16. It should be noted at this point that, in order to ensure clarity and legal certainty, all procedures and technical specifications of the system of interconnection of registers required by Directive (EU) 2017/1132 were integrated into a single implementing regulation, the Regulation Implementing Regulation (EU) 2021/1042 of the Commission of 18 June 2021, which repealed Implementing Regulation (EU) 2020/2244.

17. This Regulation is already in force and is binding in all its elements and directly applicable in all Member States. Thus, it is strange that, when introducing the amendments to Decree-Law No. 24/2019, of 1 February, the definition of the technical requirements for interconnection is not referred to this Implementing Regulation.

18. In fact, Commission Implementing Regulation (EU) 2021/1042 provides for measures that were not taken into account in the revision of Decree-Law No. 24/2019. Thus, for example, in point '4.5. Communication errors' provides that "Technical measures and procedures must be adopted to resolve any communication errors between the registry and the platform". There is nothing in this project on this matter.

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

III. Conclusion

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

- a) The densification of subparagraph a) of paragraph 2 of article 3, listing the personal identification data of the interested parties;
- b) The reformulation of article 7 in order to determine that the new website must be developed following the technical requirements of Council of Ministers Resolution No. 41/2018, of March 28, 2018;
- c) The introduction of an item that defines the appropriate technical and organizational measures to guarantee the security of the information, taking into account its electronic support; and
- d) The amendment of article 12 of the Project, in the revision of article 6 of Decree-Law No. 24/2019, of 1 February, referring the technical requirements of interconnection to the Implementing Regulation (EU) 2021 /1042 of the Commission, of June 18, 2021.

PAR/2021/113

Approved at the meeting of November 9, 2021

Filipa Calvão (President)

Av.D. Carlos 1,134.1º

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt