

## I. Order

The Commission on Economy, Innovation and Public Works of the Assembly of the Republic sent the National Data Protection Commission (CNPd), for consideration, the Bill No. 1156/XIII/2.a (PSD), which establishes the of the activity of public transport for hire in light passenger vehicles ('taxi'),

The request made and the opinion issued now derive from the attributions and powers of the CNPD, as an independent administrative entity with powers of authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and by the paragraph 4 of article 36 of Regulation (EU) 2016/679, of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of paragraph 1 of article 21. ° and no. 1 of article 22, both of Law no. 67/98, of 26 October, amended by Law no. 103/2015, of 24 August (Personal Data Protection Law - LPDP).

The assessment of the CNPD in this opinion is restricted to aspects of the regime relating to the processing of personal data, that is, operations that focus on information concerning natural, identified or identifiable persons - cf. lines a) and b) of article 4 of the RGPD -, focusing on the precepts that provide for or imply processing of personal data.

## II. Of Appreciation

1 - The parliamentary initiative now submitted for opinion aims to carry out a general review of the legal regime of the taxi sector, in order to create a harmonious and balanced general system with the rules applicable to the transport of passengers in uncharacterized vehicles.

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(TVDE) and electronic booking platforms, regulated by Law No. 45/2018, of 10 August.

Therefore, it is proposed to eliminate the current quantitative and geographical restrictions (quotas), as well as to change the existing pricing regime, with a view to allowing competition between the various service providers and facilitating a balance between supply and demand. demand. On the other hand, the possibility for taxi services to be extended to the potential created by electronic booking platforms is established, allowing the use of online platforms by traditional providers. The aim is also to harmonize the certification and licensing requirements between the two activities as well as the requirements relating to

safety and quality of service in order to avoid discrimination between service providers and segments. Finally, the Bill abandons the current legal solution that imposes an exhaustive list of the different forms of provision and charging of the taxi transport service as well as the standardization of the characteristics and image of the vehicles. two

2. As a preliminary note, it is important to mention that the Bill under analysis does not enshrine any provision that directly regulates the processing of personal data provided for therein, nor does it make any reference to the GDPR that has applied since May 25, 2018.

However, paragraph 6 of article 7 of the diploma stipulates that the regime of services provided by electronic taxi platforms and their operators are subject to compliance with the obligations and conditions provided for in articles 19 and 20 of the Law. 45/2018, of 10 August, the first provision requiring compliance with national and European legislation on the collection and protection of personal data.

It should be noted that within the scope of the legislative procedure of Law No. 45/2018, of 10 August, the CNPD was not issued an opinion, as required by Article 36(4) of the GDPR. This entity formally noted this fact to the Assembly of the Republic, on December 20, 2018, alerting to the existence in the diploma of provisions that give rise to reservations to the CNPD in the

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from the perspective of the protection of citizens and their compliance with the rules of European Union law and expressing its concern that Law no. general data protection without specifying the processing conditions (eg categories of data collected, retention periods, imposition of the duty to adopt security measures).

3-0 The Bill contains precepts aimed at the processing of personal data under the terms of article 4, n° 1 and n° 2 of the RGPD, so it is important to analyze whether they respect the provisions contained therein.

So:

a) Paragraph 4 of article 3 of the diploma under analysis lists the instructional elements that interested parties must transmit to the Instituto da Mobilidade e dos Transportes, I.P. (IMT, I.P.) when applying for a license to operate a transport activity operator. taxi, including personal data of the holders of the administrative, management or management bodies and the respective criminal record certificates. «when these are in the possession of any national public administrative authority, and

for this purpose, they must give their consent so that the IMT, / . P., proceed to obtain it...»<sup>2</sup>. Now, in the presence of a processing of personal data whose basis of legitimacy is based on the consent of the data subjects, it must comply with the requirements set out in paragraph 11) of article 4 of the GDPR, and, therefore, be informed and

<sup>1</sup> It should be noted that under the terms of Law No. 37/2015, of 5 May, the public entities competent for the instruction of administrative procedures on which the obtaining of a license depends can access the information necessary to comply with the legal requirement to present criminal record certificate applicable to the administrative procedure in question, provided that the holder of the information previously authorizes such access within the scope of the administrative procedure (cfr article 8(3)).

<sup>2</sup> See DL No. 73/2014 of May 13

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specific. And the information must cover the data processing elements listed in Articles 13 and 14 of the GDPR.

The CNPD therefore recommends that this article be reformulated in order to clarify that the consent in question must be obtained under the terms of the GDPR.

b) Special attention deserves special attention from article 7 of the Bill, which, in its paragraph 3, defines electronic taxi platforms as "electronic structures owned or operated by legal entities that provide, according to their own business model, the intermediation service between users and taxi operators adhering to the platform, following a reservation made by the user through a dedicated computer application' stipulates in paragraph 6 that the regime of services provided by these platforms as well as the respective operators are subject to compliance with the obligations and conditions provided for in articles 19 and 20 of Law no. other sensitive information to which they have access within the scope of their activity, namely information on the history of the routes taken". We understand that the wording of article 19 of Law No. 45/2018 of 10 August is vague and silent on some specific aspects of the processing of personal data in question, so the mere reference to its regime does not rule out the need to regulate in this normative instrument the processing of personal data in question, specifying the conditions of treatment. It should be noted, from the outset, that the use of the expression "collection and protection of personal data" may be misleading, since the collection of personal data is in itself a data processing, so its use is not justified or understood. empowerment.

The diploma under analysis does not include any reference to the applicability of the principles of processing of personal data provided for in article 5 of the RGPD to the data processing in question.

First of all, the necessary security measures for the processing of personal data are not specified under the terms of Article 5(1)(f) and 32 of this statute. These processing of personal data must be surrounded by the necessary security measures provided for and required by data protection legislation, as well as the conditions for limiting access to information that prevent unauthorized persons from knowing, changing, spread, subtract or delete its content.

It is also noted that the diploma does not contain any rule that ensures respect for the principles of data minimization and limitation, of particular acuity in view of the high volume and sensitivity of the personal data being processed. In fact, regarding the quantity and quality of the personal data processed by these platforms, the principle of necessity (provided for in article 5, no. of October, amended by Law No. 103/2015, of 22 August, hereinafter LPDP, or GDPR) that the information processed for a specific purpose is limited to the essential.

It should be noted that the Bill does nothing about the principle of transparency, with particular importance in the processing of data in question, and which translates into the obligation of the person responsible for the treatments to inform their customers about the privacy policies.

Finally, it is important to mention that the Bill does not mention the period of storage of personal data. Thus, one of the basic principles - that of limiting conservation (provided for in article 5, no. 1, paragraph, and both of the LPDP and the RGPD) - does not appear to be fulfilled.

c) Still within the scope of the analysis of article 7 of the Bill, we understand that it should contain a reference to the obligation to which the person responsible for the

processing to carry out a prior assessment of the impact of the planned processing operations on the protection of personal data as required by Article 35 of the GDPR. It should be noted that these platforms process data on a large scale, and that the data in question may be of a sensitive nature under Article 9 of the GDPR (for example, health data when requesting vehicles

with specific mobility characteristics, when a user registers with special needs or is when the transport of guide dogs is required). Thus, under the terms of article 35 of the RGPD, these electronic platforms are subject to the obligation to carry out an Impact Assessment, which is why it is understood that it should be a prerequisite for their licensing.

The CNPD therefore recommends that article 7 be amended in order to contain a provision that enshrines, as a prerequisite for the authorization of these electronic platforms to operate, the carrying out of an Impact Assessment of the planned processing operations on the protection of personal data.

d) On the other hand, the reference to article 20 of Law no. 45/2018 of 10 August made by article 7 no. as the norm is written, its meaning is not reached. In fact, paragraph 2 of article 20 establishes that “the verification and certification of the technological systems supporting the operation of the TVDE service, in terms of compliance with national and European legislation for the protection of personal data and other information sensitive to that they have access to within the scope of their activity, namely information on the history of the paths taken, is carried out through an audit under the supervision of the CNPD”. From reading the clause, it is clear that there are two entities involved in the audit of the technological systems supporting the operation of the TVDE service in terms of compliance with national and European legislation for the protection of personal data, one entity being the CNPD. The standard, however, allows for several interpretations, all of which are too vague or

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confusing: i - the CNPD supervises and another entity performs the audit (in which case the standard must expressly indicate which entity is the other); ii-the CNPD carries out the audit (and it is then necessary for the standard to specify what this audit includes, if it is a technical audit or if it is a question of verifying the principles of the RGPD); iii - the CNPD certifies and supervises (in this case, it is important to regulate the supervisory role).

It is recalled that the RGPD made a substantial change in the role of the CNPD, changing the existing paradigm of prior authorizations for the processing of personal data, with this entity essentially having competence for a posteriori inspection.

The GDPR clearly allows prior consultation under Article 36 of the GDPR, that is, “the controller consults the supervisory authority before proceeding with the processing when the impact assessment on data protection under Article 35.0 indicate that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk' and in few other situations. Therefore, an interpretation of the rule that leads to the attribution to the CNPD of the competence of prior

inspection in this matter does not seem to us to be without difficulties. On the other hand, the CNPD's attributions as a Control Authority are enshrined in article 57 of the RGPD, and, among them, it appears that it encourages the establishment of data protection certification procedures under the terms of article 42 n. 1 and approves the certification criteria under the terms of article 42. 5. As is well known, Draft Law 120/XIII/3a is in the process of Parliamentary approval, which ensures the implementation in the national legal system of the RGPD and which gives the Portuguese Institute of Accreditation, I.P., the competence to accredit entities to which data processing certification powers will thus be recognized. This option depends on the CNPD's abstract definition of additional accreditation requirements or criteria. Thus, an interpretation that leads to the certification by the CNPD of the technological systems supporting the operation of the Taxi service, as to the

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compliance with national and European legislation on the protection of personal data, seems inappropriate.

The CNPD recommends that paragraph 3 of article 7 of the Bill be reformulated, eliminating the reference to article 20 of Law no. provision that clarifies the legislator's understanding of this matter.

) Finally, some comments on article 17 of the Bill. Here, the Mobility and Transport Authority (AMT) and the IMT, I.P. are responsible for supervising and regulating the activity of taxi operator, as well as taxi drivers, and for this purpose these entities may request all the information that necessary, namely those resulting from the exercise of the activity. Since the CNPD is the national authority responsible for controlling and supervising compliance with the legal provisions on the protection of personal data, it is recommended to change this precept in order to underline the role of this entity in guaranteeing the rights of data subjects. , covering professionals associated with taxi operators and service users who registered on the platforms.

On the other hand, paragraph 3 of article 17 of the Bill, by allowing AMT and IMT, I.P., to request all necessary information, namely that resulting from the exercise of the activity, seems to open up the possibility for these institutions to access the travel history and its users. Such a solution proves to be manifestly abusive from the point of view of the protection of personal data, which is why it is urgent to clarify this legal provision.

As a final note, attention is drawn to the lapse in paragraph h) of article 18 regarding the name of the National Data Protection Commission.

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### III Conclusions

On the grounds set out above, the CNPD recommends amending the Bill, namely on the following points:

- 1 - The reformulation of paragraph 4 of article 3 of the diploma in order to specify that the consent of data subjects must comply with the requirements set out in paragraph 11) of article 4 of the RGPD;
- 2 - The elimination of the reference to articles 19 and 20 of Law 45/2018, of 10 August, contained in paragraph 3 of article 7 of the Draft Law and its replacement by an article that specify the conditions of data processing in the terms described above;
- 3 - The introduction of a provision that enshrines, as a prerequisite to the authorization of operation of these electronic platforms, the performance of an Impact Assessment of the processing operations foreseen on the protection of personal data;
- 4 - Clarification of the verification and certification regime of the technological systems supporting the operation of the Taxi service intended by the legislator, to be enshrined in this diploma;
- 5 - The amendment of article 17 of the Draft Law in order to underline the role of the CNPD in guaranteeing the rights of data subjects, covering professionals associated with taxi operators and service users who have registered on the platforms and the reformulation of its paragraph 3 specifying the type of information to which the AMT and the IMT, I.P. have access within the scope of their supervisory powers.

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Lisbon, April 3, 2019 Maria Cândida Guedes de Oliveira (Rapporteur)