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// NATIONAL COMMISSION JL. DATA PROTECTION

OPINION/2019/27

I. Order

The Office of the Secretary of State for Justice sent the National Data Protection Commission (CNPd), for an opinion, the new wording of the Draft Decree-Law that regulates the registration of foundations provided for in article 8 of Law no. /2012, of 9 July (Framework Law on Foundations), amended and republished by Law No. 150/2015, of 10 September. The CNPD had already issued a statement on 02/05/2019 on the first version of the diploma.

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 n. 4 of article 36 of Regulation (EU) 2016/679 of 27 April 2016 (General Data Protection Regulation - RGPD), in conjunction with the provisions of no.

1 of article 21 and paragraph 1 of article 22, both of Law no. 67/98, of 26 October, amended by Law no. 103/2015, of 24 August (Law of Personal Data Protection - 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. Article 4(a) and b) of the GDPR.

II. appreciation

The Framework Law on Foundations establishes that Portuguese and foreign foundations that carry out their purposes in national territory are subject to registration. It also provides that this register should be included in a single database, maintained and made available for public consultation by the Institute of Registration and Notary. I.P. (IRN, I.P.).

This Draft Decree-Law aims to regulate the registration of foundations and adds article 27-C to Decree-Law no. of the Notary, last amended by Law No. 110/2017, of December 15th.

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The new version of the diploma enshrines the special regime for the establishment of foundations referred to in paragraph 2 of article 17 of the Framework Law on Foundations, making it possible to establish foundations through a private document authenticated in addition to what has already been foreseen. institution regime by public deed. Within the scope of the simplified recognition procedure, the act of institution is exempt from either a public deed or an authenticated private document.

It should be noted that this new version of the Draft Decree-Law no longer includes the registration of accountability carried out through the Simplified Business Information, although article 20, no. must communicate to the competent services of the tax authority and social security the content of the registration acts concerning the provision of information of a fiscal, accounting and statistical nature of the foundations.

In terms of the protection of personal data, the Draft Decree-Law contains some relevant provisions regarding the data of members of the bodies of foundations, their voluntary representatives, representatives of foundations of law with permanent representation in the national territory, as well as liquidators. and of the judicial administrator and of the provisional insolvency judicial administrator and of the interim judicial administrator in a Special Revitalization Process (Cf. Article 2(d) and g), Article 3(b), j) and n) of the article 4, article 13 and 20, no. 1, subparagraphs c), g) and h) of the Foundations Registration Regime published in the annex to the diploma).

These precepts aim at the processing of personal data under the terms of Article 4, points 1) and 2), of the RGPD, so all the observations made in Opinion No. 3/2019 and which are fully reproduced here are maintained.

Thus, it is recommended that an express reference be made to the legal regime of data protection enshrined in the RGPD, safeguarding the rights of information, access and rectification of data subjects under the terms provided for in articles 14 to 16 of this law. cool.

As a final note, Article 21(2) of the Draft Decree-Law provides that access to the data contained in the register of foundations will be given to the General Secretariat of the Presidency of the Council of Ministers and the General Inspectorate of Finance, a protocol must be signed with the IRN, I.P., a copy of which will be sent to the CNPD.

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This Commission reserves any observations on the protocol for a later time, pursuant to Article 58(3)(b) of the GDPR.

Lisbon, May 28, 2019

Filipa Calvão (President)

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