

' NATIONAL DATA PROTECTION COMMISSION

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OPINION/2020/119

I. Order

The Office of the Secretary of State for Justice asked the National Data Protection Commission (CNPd) to comment on the Draft Ordinance that aims to establish the operating and financing regime for the organization and development model of the regime established by Law no. 78/2017, of 17 August, with the specificities contained in Law no. formulated and the present opinion fall within the attributions and competences of the CNPD, as the national authority to control the processing of personal data, in accordance with the provisions of subparagraph c) of paragraph 1 of article 57 and paragraph 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 - GDPR), in conjunction with the provisions of article 3, in paragraph 2 of article 4 and subparagraph a) of Article 6(1), all of Law no.

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

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Law No. 78/2017, of 17 August, created a simplified cadastral information system, with a view to adopting measures to identify the land structure and the ownership of rustic and mixed buildings, and created the Balcão Único do Prdio (BUPI), which is a physical and virtual branch that gathers all the registration, matrix and georeferenced information related to buildings and as a platform for articulating the citizen with the Public Administration within the scope of the land registry, in a set of ten municipalities such as pilot project.

Subsequently, Law No. 65/2019, of August 23, generalized the application of the cadastral information system! to the entire national territory, also promoting the universalization of the BUPI as a national platform for registering and registering the territory. As the CNPD noted in Opinion/2019/48 of August 23,

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2019.1 (Opinion on the draft diploma aimed at amending Regulatory Decree No. 9-A/2017, of 3 November, which defined and regulated some aspects and matters contained in Law No. 78/2017, of 17 of August), this legal diploma, which provides for and regulates the processing of personal data, was not subject to its assessment, as required by Article 36(4) of the GDPR.

1 - Draft ordinance that establishes the operating and financing regime of the organization and development model of the regime established by Law No. 78/2017, of August 17, with the specificities contained in Law No. 65/2019, of August 23rd Through Council of Ministers Resolution No. 45/2020, of 21 May, the Mission Structure for the Expansion of the Simplified Cadastral Information System was created with the mission of guaranteeing the expansion of the information system to the entire national territory. simplified cadastre in conjunction with the municipalities.

Pursuant to the provisions of paragraph 3 of article 5 of Law no. 65/2019, of 23 August, the operating and financing regime for the organization and development model of the regime established by Law no. 78/ 2017, of 17 August, was approved by decree of the members of the Government responsible for the areas of finance, administrative modernization of justice, local authorities for spatial planning and agriculture and forests, which is now being implemented.

Article 3 of the draft Ordinance establishes that the coordination, decision and support powers attributed to the Technical Coordination Center under the terms of subparagraph a) of paragraph 1 of article 5 of Law No. 65/2019, of August 23, are carried out by the Mission Structure for the Expansion of the Simplified Cadastral Information System. For this purpose, paragraph 2 of the same article lists the competences of the Technical Coordination Center, reproducing here subparagraphs b) to m) of paragraph 3 of Resolution of the Council of Ministers No. 45/2020, of 21 May , which sets out the objectives of the Mission Structure, adding information about the Units on the BUPI website

1 Available at https://www.cnpd.pt/honne/decisoos/Par/PAR__2019__48.pãf. Opinion on the draft diploma aimed at amending Regulatory Decree no.

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of existing Local Competencies as well as information on all national and community support, likely to finance projects aimed at developing the simplified cadastral information system and the BUPI.

In turn, article 4 of the Draft Ordinance provides that the powers provided for in subparagraph b) of paragraph 1 of article 5 of

Law no. Local competences are exercised by the Municipality or, jointly or separately, by the inter-municipal entity in which it integrates and to whom it delegates competences.

It should be noted that article 6 provides for the Technical Coordination Center to conclude with the entities listed therein a collaboration protocol that regulates, in particular, the electronic sharing of information on the characterization and identification of rustic and mixed buildings and their holders and characterization of the national territory, paragraph 2 opening the possibility of entering into collaboration protocols with other entities of the Public Administration that may prove necessary for the expansion of the cadastral information system and the BUPI.

The CNPD recalls that the protocols, insofar as they correspond to legal acts of public entities that define binding rules for the parties regarding the processing of personal data, have the nature of an administrative regulation. To that extent, under the terms of Article 36(4) and Article 57(1)(c) of the GDPR, they must be subject to prior assessment by the CNPD. So that there is no doubt as to this duty, the CNPD suggests its clarification in the text of the article.

2 - Draft Interinstitutional Collaboration Agreement to be signed between the Technical Coordination Center and the Municipalities

Pursuant to paragraph 5 of article 1 of Law no. 65/2019, of 23 September, the operationalization of the regime provided for therein depends on the conclusion of an inter-institutional collaboration agreement between the Technical Coordination Center provided for in paragraph

a) of paragraph 1 of article 5 and each Municipality (Agreement). As mentioned above, the Mission Structure for the Expansion of the Simplified Cadastral Information System performs the functions assigned to the Technical Coordination Center as provided for in paragraph a)

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of paragraph 3 of the aforementioned Resolution of the Council of Ministers. In turn, the Institute of Registries and Notaries, I.P. (IRN, I.P.), is the entity responsible for the Cadastra Information System! Simplified and by the BUPI, pursuant to paragraph 1 of article 2 of Law no. 65/2019, of 23 August, and for carrying out the special registration and justification procedures provided for in this Law.

Analyzing the draft inter-institutional collaboration agreement, from the point of view of its compliance with the legal regime for

the protection of personal data, it is important to note that Clause 2.a of the Agreement lists the personal data of the owner of the building that may be subject to treatment: full name, tax identification number (NIF) and respective address when known. In turn, Clause 6.3 lists the personal data of the technicians authorized to access the Bupi platform that will be the object of communication by the municipality for the purpose of identification: name, email address and mobile telephone contact. The data in question are adequate, relevant and limited to what is necessary for the pursuit of the intended purpose, insofar as the identification of the respective owner is essential for the identification of the buildings, and the NIF is here the personal data that allows to ensure the relationship of the information existing in the land registers with the information on assets available to the Tax and Customs Authority, also recognizing that the given address is useful! taking into account the purposes of the BUPI platform. With regard to the personal data of technicians authorized to access the platform, the CNPD only points out that the requirement to indicate the mobile telephone contact presupposes that the mobile device is made available by the municipality where the technician works. Thus, the principle of data minimization provided for in subparagraph c) of paragraph 1 of article 5 of the GDPR is considered fulfilled.

Access to information on the BUPI platform by the Municipality is regulated in Clause 3a of the Agreement, being done by HTTPs and by means of authentication of the respective users through a secure channel with SSL, using their own access profiles with differentiated permissions that respect the principle of the need to access to information. Pursuant to no. 4 of this Clause «Consultations carried out by the Municipality are recorded electronically by the BUPI platform for a minimum period of 10 years». It is important, first of all, to emphasize the importance of the foreseen yogsaqm including the user/d, the date/time

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of the search, the search terms and the type of result (no results, 1 result, multiple results).

With regard to the minimum period of 10 years provided for in the text, in addition to the natural reservations regarding the establishment of such a long period, the CNPD is surprised by the open formula used, without defining any maximum limit for the conservation of consultation records. It is recalled that the data must be kept only for the period necessary for the purposes for which they are processed, so it is recommended to reformulate this point 4 of Clause 3.a in order to respect the principle of limitation of retention provided for in point e.) of Article 5(1) of the GDPR.

In turn, the need to expressly enshrine in the text the existence of mechanisms that allow the auditing of the accesses made,

such as the use of alert systems (for example, due to a high number of searches in a certain interval) , given the absence of any reference in the Agreement to this essential point.

Finally, the CNPD warns of the need for the list of buildings to be presented in searches carried out by tax identification number and legal person number to contain only the buildings relevant to the municipality in which the user of the platform works, in compliance with the principle of the “need to know”.

III. Conclusion

Based on the above grounds, the CNPD recommends:

1 - Regarding the Draft Ordinance that establishes the operating and financing regime for the organization and development model of the regime established by Law No. 78/2017, of 17 August, with the specifics contained in Law No. 65/20119 , of August 23:

a) The reformulation of article 6 in order to clarify that the Protocols provided for therein must be subject to prior assessment by the CNPD, under the terms of paragraph 4 of article 36 and subparagraph c) of paragraph 1 of article 57 of the GDPR;

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2 - Regarding the Interinstitutional Collaboration Agreement Project to be signed between the Technical Coordination Center and the Municipalities:

a) Densification of paragraph 4 of Clause 3.a of the Agreement in order to mention that the logs include the userId, the date/time of the search, the search terms and the type of result;

b) Also with regard to point 4 of Clause 3a, the indication of a maximum period of retention of data in order to respect the principle of limitation of retention provided for in subparagraph e) of article 5 of the RGPD; and

c) The express consecration of mechanisms that allow the auditing of the accesses performed.

Lisbon, September 29, 2020

Maria Cândida Guedes de Oliveira (Rapporteur)