

OFFICIAL JOURNAL N° 60 BIS OF MARCH 27, 2020

Ordinance No. 00002 / PR / 2020 of 01/31/2020 amending and supplementing certain provisions of Law No. 001/2011 of September 25, 2011 relating to the protection of personal data

THE PRESIDENT OF THE REPUBLIC,

HEAD OF STATE;

Considering the Constitution;

Considering Directive n° 07/08-UEAC-133-CM-18 establishing the legal framework for the protection of the rights of users of electronic communications networks and services within CEMAC;

Considering the law n° 1/2005 of February 4, 2005, relating to the General Statute of the Public Service, along with the subsequent amending texts;

Considering the law n° 20/2005 of January 3, 2006, establishing the rules of creation, organization and management of the services of the State, along with the subsequent amending texts;

Considering the law n° 001/2011 of September 25, 2011, relating to the protection of personal data;

Considering the law n° 012/2019 of July 16, 2019, authorizing the President of the Republic to legislate by ordinance during the parliamentary intersession;

Considering the law n° 017/2019 of January 22, 2020, authorizing the President of the Republic to legislate by ordinance during the parliamentary intersession;

Considering decree n° 01392 / PR / MRPICIRDHN of 6 December, 2011, relating to the attributions and organization of the Ministry of parliamentary relations, constitutional institutions, regional integration, in charge of human rights and NEPAD, along with the subsequent amending texts;

Considering decree n° 0257 / PR of December 2, 2019, appointing the Prime Minister, Head of Government;

Considering decree n° 0258 / PR / PM of December 2, 2019, establishing the composition of the Government of the Republic, along with the subsequent amending texts;

The Council of State consulted;

The Council of Ministers heard;

ORDERS:

Article 1er: The provisions of Articles 13, 14, 20, 37, 101, 102 and 104 are amended and now read as follows:

"New **Article 13:** Any natural person has the right to oppose, for legitimate reasons, the processing of personal data concerning them.

They have the right to oppose by any means, free of charge, the communication or use on any medium of their personal data, for various purposes if they have not previously consented.

The right to object does not apply when the processing is subject to public order or meets a legal or contractual obligation.

"New **Article 14 :** Anyone can directly request that the information held on them be:

- corrected if it is inaccurate;
- completed or clarified if it is incomplete or equivocal;
- updates if it is obsolete;
- erased if it is has not been correctly collected and stored or if the purpose is misused.

Any person proving their identity has the right to obtain from the controller the erasure, as soon as possible, of the personal information concerning them, in particular in one of the following cases:

- if the personal information is no longer necessary for the purposes for which it was collected or otherwise processed;

- if the data subject withdraws the consent on which the processing is based and that there is no other legal basis for the processing;
- if the personal information has been the subject of unlawful processing;
- if the personal information must be erased to comply with a legal obligation;
- if the personal information has been collected as part of the services offered by the information company.

When the personal information has been made public and the controller is required to erase it by virtue of the previous paragraph, they must take reasonable measures, including technical ones, to inform third parties that the data subject has requested the deletion of any link to their personal data, or any copy or reproduction thereof.

The provisions of paragraphs 1 and 2 above do not apply insofar as the processing is necessary in particular:

- for the exercise of the right to freedom of expression and information;
- for compliance with a legal obligation or for the exercise of a public interest mission vested in the controller;
- for reasons of public interest in the field of public health;
- for archival purposes in the public interest, for scientific, historical or statistical research;
- for legal action. "

When the data subject requests it in writing, regardless of the medium, the controller must justify, at no cost to the requester, that they have conducted the operations required by virtue of the preceding paragraph within a period of one month after registration of the request.

In the event of a dispute, the burden of proof lies with the controller to whom the right of access is exercised.

If data has been transmitted to a third party, the controller must perform the necessary diligence in order to notify them of the operations they have conducted in accordance with paragraph 1. "

"New **Article 20** : The bodies of the National Commission for the Protection of Personal Data are:

- office;

- plenary training;
- restricted training;
- the provincial representations."

"New **Article 37** : A General Secretariat administers the National Commission for the Protection of Personal Data.

The General Secretariat is headed by a Secretary General appointed by decree taken in the Council of Ministers, on the proposal of the President of the Commission, from among the civil administrators or economic and financial administrators of the first category, justifying an experience of at least ten years.

They are assisted by a Deputy Secretary General appointed under the same forms and conditions.

The organization of the General Secretariat is established by regulation."

"New **Article 101** : The National Commission for the Protection of Personal Data assesses and decides according to the seriousness of the breaches noted with this ordinance, the following measures or sanctions:

- a warning to the data controller who does not comply with the obligations arising from this ordinance;
- a formal notice to discontinue the shortcomings noted within the time limit that it sets;
- a financial penalty.

The financial penalty set out in this article may be decided from the first breach noted.

The recovery of penalties is carried out in accordance with the legislation relating to the recovery of State tax claims."

"New **Article 102**: A data controller who does not have a declaration receipt or authorization is liable to one of the following penalties:

- a formal notice for regularization within a time limit set by the Commission;
- a financial fine in the amount of one to one hundred million CFA francs."

"New **Article 104**: The measures and sanctions pronounced by the Commission are taken by deliberations, after a finding of non-compliance with the law of a data controller in the context of his activities or after a report drawn up contradictorily as provided for in Article 100.

The controller may lodge or have lodged observations with the Commission.

The commission can make public the warnings it issues. It may also, in the event of bad faith on the part of the data controller, order the inclusion of the other sanctions it decides in the newspapers and media it designates. The costs are borne by the persons concerned."

Article 2: Three bullet points are added to Article 6 which read as follows:

- **profiling**: Processing using an individual's personal data in order to analyze and predict their behavior, determine their performance at work, their financial situation, their health, their preferences, their lifestyle;
- **deletion**: Technique which allows a data subject the right to obtain from the controller the deletion within a reasonable period of personal data concerning him;
- **portability**: Technique that offers a data subject the possibility of recovering part of their data in an open and machine-readable format, allowing them to easily store or transmit them from one information system to another, with a view to their reuse for personal use."

Article 3: Article 51 is added as follows:

"A data protection officer, called DPD, can be appointed within or outside public or private organizations. They may be natural or legal persons.

The delegate is responsible for implementing the compliance of all the processing operations implemented by the competent body, in accordance with Law No. 001/2011 of September 25, 2011, on the protection of personal data.

The delegate is appointed on the basis of their professional and moral qualities and in particular, their specialized knowledge of the law and practices in matters of personal data protection and privacy.

The data protection officer is declared to the Commission, approved and certified on the basis of specifications established by the National Commission for the Protection of Personal Data and notified to the staff representative bodies.

To guarantee the effectiveness of his tasks, the delegate must have the material, organizational and sufficient resources to enable him to carry out his tasks.

The data protection officer is the focal point between the Commission and the body that appointed them. They are responsible for:

- answering questions from employees within public or private organizations that affect the protection of their personal data;
- answering questions that any individual asks about the exercise of their right, with respect to this ordinance;
- making responsible, informing and advising those in charge of the organization as well as the collaborators who process personal data on their obligations towards this ordinance;
- organizing training courses concerning the processing of data within the organization;
- keeping a register of the processing of the organization's personal data. "

Article 4: Articles 13, 14, 24, 40 and 102 are added as follows:

"Article 13 bis: Everyone has the right to be informed before information concerning them is communicated to third parties or used on behalf of third parties for prospecting or profiling purposes."

"Article 14 bis: Anyone proving their identity has the right to receive the personal data concerning them that they have provided to a data controller, in a digital file, commonly used and machine-readable. The latter has the right to transmit its data to another controller without the controller to whom the personal data communicated obstructs it, when:

- the processing is conducted using automated processes;
- the data subject, in exercising their right to data portability, has the right to instruct that their personal data be transmitted directly from one controller to another, when technically possible."

"Article 14 ter: No natural person may be the subject of a prejudicial decision based exclusively on automated processing, including profiling.

This provision does not apply when the decision is necessary for the conclusion or performance of a contract between the data subject and a controller.

In the case referred to in the previous paragraph, the data controller implements appropriate measures to safeguard the rights and freedoms and the legitimate interests of the data subject.

The decisions referred to in paragraph 2 of this article may not be based on sensitive personal data, unless:

- the data subject has given their explicit consent to the processing of their personal data for one or more specific purposes;

- the processing is necessary for reasons of important public interest and that appropriate measures to safeguard the rights and freedoms and the legitimate interests of the data subject have been taken and implemented."

" **Article 24 bis** : The provincial offices are responsible for carrying out the tasks of the National Commission for the Protection of Personal Data, at the provincial level.

Provincial representatives are appointed in accordance with specific texts."

" **Article 40 bis** : A fee called the Fee for the Protection of Personal Data and Privacy, abbreviated RPPVP, is hereby established.

The charge for the protection of personal data and privacy is intended to finance activities in the field of personal data protection and privacy.

The fee for the protection of personal data and privacy is due by any natural person whose personal data is collected, processed, transmitted or stored by a data controller whose control and protection is guaranteed by the National Commission for Protection of Personal Data.

The fee for the protection of personal data and privacy is collected by the data controller and transferred to the management account of the accounting agency attached to the National Commission for the Protection of Personal Data.

The non-repayment of the fee by the collecting data controller exposes it to the fiscal and penal sanctions provided for by the texts in force.

No natural or legal person may avail himself of the provisions of a contract, convention or special agreement to claim the benefit of an exemption from rights and fees on the protection of personal data and privacy.

The fee is set at one thousand CFA francs per year and per person."

"**Article 40 ter**: The resources of the National Commission for the Protection of Personal Data are composed of:

- the State allocation;
- assigned revenue;
- own resources.

Own resources are made up of:

- fees applicable to certain services and acts rendered to users;
- penalties resulting from its activity."

"Article 40 quater: The income from the license fee and the other own resources mentioned in article 40a are paid to the accounting agency attached to the CNPDCP, then transferred to the main account of the Public Treasury, by the accounting officer, according to the distribution key below:

- 40% for the state budget;
- 60% for the development and specific activities of the Commission.

The base, the rate and the methods of payment of the fee and the other own resources are fixed by deliberation taken in the plenary meeting of the Commission. "

"Article 102 bis: A data controller who has a declaration receipt or authorization and who does not comply with the obligations arising from this ordinance incurs, after formal notice and adversarial debate, one of the following penalties:

- the suspension of the acknowledgement or authorization for a period not exceeding two months;
- the final withdrawal of the acknowledgement or authorization at the end of the suspension period;
- a pecuniary fine in the amount of one to one hundred million CFA francs;
- the amount of the financial fine is proportional to the gravity of the breach and to the advantages which are drawn from it. "

Article 5: Regulatory texts determine, as necessary, the provisions of any kind necessary for the application of this ordinance.

Article 6: This ordinance which repeals all previous contrary provisions will be registered, published in the Official Gazette and executed as State law.

Issued at Libreville, January 31, 2020

By the President of the Republic,

Head of State

Ali BONGO ONDIMBA

The Prime Minister, Head of Government

Julien NKOGHE BEKALE

The Minister of State, Minister of the Interior

Lambert Noël MATHA

The Minister of State, Minister of Communication, Government Spokesman

Edgard Anicet MBOUMBOU MIYAKOU

The Minister of Relations with Constitutional Institutions and Independent Administrative Authorities

Denise MEKAM'NE EDZIDZIE née TATY

The Minister of Economy and Finance

Jean-Marie OGANDAGA

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