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Data Protection Laws in Portugal

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Introduction

The fundamental right to particular data protection was established in the Constitution of the Portuguese Republic 1976 ('the Constitution'). The first Portuguese Data Protection Act No. 10/91 was espoused in 1991, foreknowing the creation of the Portuguese administrative authority in data protection matters. Before the entry into force of the General Data Protection Regulation ('GDPR'), the general rule was the following before initiating any particular data processing, the regulator had to notify the Portuguese data protection authority ('CNPD') or gain previous processing authorization from the same reality.

The CNPD's opinions taken following authorization procedures have been veritably inconsistent. Especially, regarding retention ages of particular data (e.g. for identical particular data processing purposes/ conditioning), the CNPD would establish different retention ages. Hence, it's delicate to prognosticate the interpretations and opinions that the CNPD is likely to borrow within the GDPR. Still, it's worth mentioning that the CNPD has been espousing a conservative approach.

Data protection laws

In addition to the GDPR, the Portuguese legal frame comprises specific original legislation on data protection, videlicet

- Law no. 58/2019 of 8 August, Portuguese Data Protection Law on the protection of natural persons concerning the processing of particular data and on the free movement of similar data (transposing Directive 2016/679 of the European Parliament and of the Council of 27 April 2016);
- Law no. 59/2019 of 8 August, which approves the rules on the processing of particular data for forestallment purposes, discovery, disquisition or execution of felonious offenses or the enforcement of penalties (transposed Directive (EU) 2016/680 of the European Parliament and the Council, of 27 April 2016);
- Law no. 41/2004 of 18 August, amended by the Law no. 46/2012 of 29 August, concerning the processing of particular data and sequestration in the electronic dispatches sector (Directive 2002/ 58/ EC on sequestration and electronic dispatches);
- Law no. 32/2008 of 17 July, concerning the retention of data generated or reused in the environment of electronic dispatches services (Directive 2006/ 24/ EC);

.The Portuguese frame also comprises a set of legal warrants that provision multiple legal vittles regarding data protection, similar as

. • Constitution of the Portuguese Republic sets forth the main principles and abecedarian rights regarding sequestration and data protection;

• Lawno.7/2009 of 12 February, (Portuguese Labour Code), that includes vittles on data protection regarding workers;

. • Lawno.34/2013 of 16 May, regarding the use of videotape surveillance systems by private security realities and bus protection;

.• Lawno.1/2005 of 10 January, which establishes the vittles concerning the use of videotape surveillance means by public authorities in public places;

. • Decree- Lawno.207/2005 of 29 November, on electronic surveillance used by public authorities in business control.

• Regulationno.798/2018, approved by the Portuguese Data Protection Authority regarding the List of Personal Data Processing Conditioning subject to Data Protection Impact Assessment

. Data protection officer

The data protection officer must be appointed grounded on professional rates and have specialized knowledge in the law and practices of data protection, but a professional instrument isn't needed. Anyhow of the nature of the legal relationship, the DPO exercises its function with specialized autonomy. There are three functions for the DPO insure checkups are conducted, produce mindfulness for the significance of the early discovery of security incidents, and ensure the relations with the data subjects in terms of data protection. As the Comissão Nacional de Protecção de Dados has noted, these fresh functions constitute a violation of the GDPR as they aren't handed for in the GDPR.

Portugal is an EU member state. The main sources of law governing data sequestration in the European Union include

• EU regulations – legal acts that have the general operation, are binding in their wholeness and are directly applicable in all EU countries; and

. • EU directives – legal acts which bear member countries to achieve a particular result without decreeing the means through which that effect should be achieved. Directives typically don't define the exact rules to be espoused.

The main EU legislative frame comprises

• Regulation (EU)2016/679 on the protection of natural persons concerning the processing of particular data and the free movement of similar data (General Data Protection Regulation (GDPR)); and

• Regulation (EU)2018/1725 on the protection of natural persons concerning the processing of particular data by EU institutions, bodies, services, and agencies and the free movement of similar data.

Other applicable EU bills include

- Regulation (EU)611/2013 on measures applicable to the announcement of particular data breaches under Directive 2002/ 58/ EC on sequestration and electronic dispatches;
- Regulation (EU)604/2013, establishing the criteria and mechanisms for determining the member state responsible for examining an operation for transnational protection; and
- . • several EU directives and opinions.

The Portuguese legislation includes

- Act58/2019, which executed the GDPR; and
- . • Act59/2019 on the processing of particular data for the forestallment, discovery, disquisition, or suppression of felonious offenses or the enforcement of felonious warrants.

Portability and interoperability

The solon clarifies this right only applies to data handled by the data subject, therefore not espousing the position of the Composition 29 Working Party that mentions this could also include inferred data. Also, it clarifies that whenever possible, the portability of the data must be in an open format.

Videotape surveillance

Videotape surveillance is confined to the need to cover people and means, which is in line with the CNPD's position with videotape surveillance. The law establishes the cameras can not target public roads, the innards of areas reserved to guests, druggies, or workers, similar as bathrooms, staying apartments, and dressing apartments, nor can it point to ATMs in such a manner that it captures the keyboard.

The following legislation applies to videotape surveillance

- Act34/2013 on the use of videotape surveillance cameras by private security companies and for tone- protection
- Act1/2005 on the use of videotape surveillance cameras by the security forces in public places
- other acts on the use of electronic surveillance for road business purposes and inside public vehicles similar to hacks.

The National Data Protection Commission (CNPD) is the Portuguese data protection authority.

The CNPD is structured as an independent body. The chairman and two other members of its board are tagged by the public Parliament. The remaining four members of the board comprise one judge, one public prosecutor, and two other individuals to be appointed by the government.

The CNPD is vested with powers of authority throughout the public home. It's endowed with the power to supervise and cover compliance with the GDPR, laws, and regulations in the field of particular data protection, with strict respect for mortal rights and abecedarian

freedoms, as well as guarantees elevated in the Portuguese Constitution and other applicable or applicable legislation.

In exercising its powers, the CNPD accepts complaints and supervises the processing of particular data, with the power to pierce demesne, outfit, and other coffers of realities or individualities that control or process similar data. It has also the power to probe, solely or in cooperation with other European authorities, cases of non-compliance and to inspect European information systems in this regard.

Offenses of an executive nature will dodge forfeitures of over to

- € 20 million for large pots;
- € 2 million for small and medium-sized companies;
- 4 of total worldwide periodic development for companies; or
- € for individualities.
- Felonious offenses will be reported to the National Public Prosecutor's Office.

Data protection officer appointment

The Data Protection Law establishes that the data protection officer ('DPO') is subject to a duty of professional secretiveness and has, in addition to the vittles of Articles 37 to 39 of the GDPR, the following tasks

1. to insure that listed checkups and non-scheduled checkups are carried out;
2. to raise stoner mindfulness to the significance of the timely discovery of security incidents and the need to inform the security officer incontinently; and
3. to ensure relations with data subjects in matters covered by the GDPR and by the Portuguese legislation on data protection.

Data retention

The data retention period shall correspond to the period fixed by law or regulation or, in the absence of law or regulation, to the period which is necessary for the processing.

When, due to the nature and purpose of the processing, videlicet for public interest archiving purposes, scientific or literal exploration purposes, or statistical purposes, it isn't possible to determine in advance when the processing is no longer necessary, the conservation of particular data is legal, handed that applicable specialized and organizational measures are espoused to guarantee the rights of the data subject, videlicet the information about their conservation.

When the particular data is necessary for the regulator or processor to prove compliance with contractual or other scores, it may be retained until the separate enactment of limitation is reached.

When the purpose that motivated the original or posterior processing of particular data ceases, the regulator shall do to destroy or anonymize similar data.

Data regarding contributory affirmations for withdrawal may be retained without any retention period to help the data subject in reconstituting donation careers, handed that acceptable specialized and organizational measures are espoused to guarantee the data subject's rights

