

## **Law 42/VIII/2013 of 17 September**

By the mandate of the people, the *Assembleia Nacional* passes into Law in accordance with paragraph b) of Article 175 of the Constitution, the following:

### **CHAPTER I**

#### **General provisions**

##### **Article 1**

###### **Object**

The present Law regulates the composition, competence, organization and operation of the *Comissão Nacional de Protecção de Dados* (CNPD) (National Commission of Data Protection), as well as the statutes of its members.

##### **Article 2**

###### **Nature**

The CNPD is an independent administrative entity which operates within the *Assembleia Nacional*, whose powers of authority are defined in this Law.

##### **Article 3**

###### **Legal Regime**

The CNPD acts by the provisions of the present Law, by the applicable legal provisions and, subsidiarily by the applicable regime to the independent regulatory authorities in the economic and financial sectors.

##### **Article 4**

###### **Territorial area**

1. The CNPD exercises its authority throughout the national territory.
2. The CNPD may be requested to exercise its supervisory powers by a data protection authority of another State within the terms of agreement and conventions of which Cape Verde is a party.
3. The CNPD shall cooperate with the data protection supervisory authorities of personal data protection of other States in disseminating national law in the area of personal data protection as well as in the defence and exercise of the rights of individuals resident abroad.

##### **Article 5**

###### **Headquarters**

The CNPD shall have its headquarters in the city of Praia and can establish branches in other parts of the country.

## **Article 6**

### **Duty to cooperate**

1. Public and private entities shall cooperate with the CNPD by providing it with all information requested in carrying out its responsibilities.
2. The duty to cooperate shall be ensured in particular when the CNPD, in order to exercise its functions in full, has the need to examine the computer system and personal data filing systems as well as all documentation relating to the processing and transmission of personal data.
3. The courts must send to the CNPD certificates or copies of judgements or rulings given on cases related to the right of personal data protection, particularly about crimes or appeals of decisions of CNPD.

## **Article 7**

### **Access to computer support systems to data processing**

The CNPD or its members and the staff delegated thereby have the right of access to the computer systems supporting personal data processing, as well as the documentation referred to in the previous article, within the scope of its authority and responsibility.

## **CHAPTER II**

### **Duties and responsibilities**

## **Article 8**

### **Duties**

1. The CNPD is the national authority endowed with the power to supervise and monitor compliance with the laws and regulations in the area of personal data protection, with strict respect for human rights and the fundamental freedoms and guarantees enshrined in the Constitution and the law.
2. The CNPD shall be endowed with:
  - a) investigative powers, and may have access to data undergoing processing and powers to collect all the information necessary for the performance of its supervisory duties;
  - b) powers of authority, particularly those of ordering the blocking, erasure or destruction of data, or imposing a temporary or permanent ban on the processing of personal data, even if included in open data processing networks from servers situated on Cape Verdean territory;
  - c) the power to give opinions before processing is carried out and to ensure their publication.
3. In the event of repeated failure to comply with legal provisions relating to personal data the CNPD may warn or publicly censure the processor, and in accordance with its duties may

raise the matter with the *Assembleia Nacional*, with the government and other organs and authorities.

## **Article 9**

### **Intervention in legal processes**

1. The CNPD has legitimate authority to engage in legal proceedings where the provisions in this Law have been violated and must report to the Public Prosecution Service any criminal offences it is aware of in exercising and arising out of its functions, as well as taking the necessary and urgent precautionary measures to provide the evidence.
2. The CNPD is represented at law by the Public Prosecution Service and is exempt from costs in the proceedings in which it is involved.

## **Article 10**

### **Responsibilities**

1. The CNPD is responsible, in particular, for:
  - a) authorising or recording, as applicable, the processing of personal data;
  - b) authorising in exceptional cases the use of personal data for purposes not giving rise to their collection, with respect for the principles laid down in the law;
  - c) authorising the combination of data processed automatically in the cases provided by the law;
  - d) authorising the transfer of personal data in the cases provided by the law;
  - e) establishing the time for keeping personal data according to their purpose, issuing directives for particular sectors of activity;
  - f) ensuring the right of access to information as well as the exercise of the right of rectifying and updating;
  - g) authorising the establishment of costs or frequency for exercising the right of access and establishing the maximum periods for compliance in each sector of activity with the obligations which are incumbent upon the controller in processing personal data provided by law;
  - h) acting on applications made by any person or by an association representing that person concerning the protection of his rights and freedoms regarding the processing of personal data and informing them of the outcome;
  - i) checking the lawfulness of data processing at the request of any person whenever such processing is subject to restricted access or information, and informing the person that a check has been made;
  - j) assessing the claims, complaints or applications of private individuals;
  - k) waiving the security measures as provided for by law, issuing directives for particular sectors of society;
  - l) ensuring Cape Verde's representation in international meetings within the scope of its responsibilities;
  - m) applying fines;
  - n) authorising recruitment of staff, transfers, acquisition and representation;

- o) exercising other legally established responsibilities.
2. In exercising its responsibilities to issue directives or assess codes of conduct the CNPD must promote consideration of the views of the associations defending the interests concerned.
3. In exercising its functions the CNPD shall lay down obligatory decisions against which challenges or appeals may be lodged at the competent courts.
4. The CNPD may suggest to the *Assembleia Nacional* the measures deemed useful for pursuing its duties and exercising its responsibilities.

## **Article 11**

### **Mandatory periodic penalty**

1. The recipients of the individualised deliberations of the CNPD are subject to paying a small amount for each day of delay in complying, beginning from the date of publication or notification.
2. The amount to be paid daily referred to in 1 above is stipulated at:
  - a) Five thousand Cape Verdean Escudos when the infringement is committed by an individual;
  - b) Ten thousand Cape Verdean Escudos when the infringement is committed by a group.

## **Article 12**

### **Consultative Competence**

1. The CNPD must be consulted on whatever legal provisions related to personal data processing.
2. The CNPD must also be consulted to issue opinions on legal provisions or legislative initiatives related to personal data processing.

## **CHAPTER II**

### **Organisation and mandate of members**

#### **Section I**

#### **Composition, mandate and assuming office**

## **Article 13**

### **Composition and election**

1. The CNPD shall be composed of three members of recognised competence and moral integrity, elected by the *Assembleia Nacional* by a two-thirds of its members present, superior to the absolute majority of members of the *Assembleia Nacional* .
2. The presidency of the CNPD is assumed by each of its members by alphabetic order respectively for a period of two years.

## **Article 14**

## **Mandate**

The members of the CNPD shall have a mandate of six years and shall cease when the newly appointed members take office, and may not be renewed for more than one term.

## **Article 15**

### **Taking office**

The members of the CNPD shall take office before the President of the *Assembleia Nacional* within the period of fifteen days following the publication of the resolution which approve the respective election.

## **Section II**

### **Status of members**

## **Article 16**

### **Capacity**

Only citizens with civil and political rights shall be members of the CNPD.

## **Article 17**

### **Irremovability**

1. Members of the CNPD are irremovable. They shall not cease their functions before the end of their mandate, except in the following cases:
  - a) death or permanent physical incapacity or a duration which surpasses the date of the end of their mandate;
  - b) resigning;
  - c) loss of mandate.
2. In the case of a vacancy from one of the motives provided for in 1 above, this shall be filled within a period of sixty days following its verification by means of the appointment of the new member by the competent entity.
3. The newly appointed member in the provisions provided in 2 above, shall complete the mandate of the member he substituted.

## **Article 18**

### **Guarantees**

The members of the CNPD shall benefit the following guarantees:

- a) They shall not be jeopardised in relation to job stability, professional career and the benefits of social welfare to which they are entitled;
- b) The period corresponding the exercise of their mandate shall be considered, by all effects, as given in their original job positions.

## **Article 19**

## **Resigning**

1. The members of the CNPD may resign by means of a written declaration delivered to the Commission.
2. The resignation shall become effective with its announcement and shall be published in Section I of the *Boletim Oficial* (Official Bulletin).

## **Article 20**

### **Loss of Mandate**

1. Members of the CNPD shall lose their mandate if:
  - a) they are affected by any of the incapacities or incompatibilities as provided for in the law;
  - b) they absent, in the same year, three consecutive meetings or six meetings in all except for justified motives;
  - c) they commit violations provided for in Article 22 c), for as long as it is declared by the court.
2. Depending on the nature of the case, the loss of mandate shall be an object of deliberation or declaration to be published in Section I of the *Boletim Oficial*.

## **Article 21**

### **Salary**

The salary of the members of the CNPD shall be fixed by means a resolution of the *Assembleia Nacional*.

## **Article 22**

### **Duties**

The duties of the members of the CNPD shall be:

- a) Exercise the respective function with exceptional competence, rigor and independence.
- b) Participate actively and punctual with regards tasks to be performed.
- c) Keep secret regarding issues or processes which are object of appreciation, without endangering the obligations provided for in the law.

## **Article 23**

### **Incompatibilities**

The members of the CNPD shall be subject to the regime of incompatibilities established for the holders of high public positions.

## **Article 24**

### **Impediments and suspicions**

1. Impediments and suspicions shall be applicable with respective adaptations, the provisions which regulate the status of Judge.
2. The impediments and suspicions shall be appreciated by the CNPD.

### **Article 25**

#### **Identification cards**

1. The members of the CNPD shall have identification cards whose model and conditions of emission shall be part of the resolution of the *Assembleia Nacional*, which shall include the position, privileges and the inherent rights of the position of the member.
2. The identification card shall be simultaneously of free movement and access to all places where personal data are being processed subject to the control of the CNPD.

### **CHAPTER III**

#### **Functioning**

### **Article 26**

#### **Meetings**

1. The CNPD shall function with permanent character.
2. The CNPD shall have ordinary and extraordinary meetings
3. The extraordinary meetings shall take place:
  - a) From the initiative of the president;
  - b) At the request of two of its members.
4. The meetings of the CNPD shall not be public and shall take place at its premises or for its deliberations in any other place within the national territory, considering the periods established in the adequate terms in the discharge of its functions.
5. The president, when he deems convenient, may, with the agreement of the Commission, invite any person, whose presence shall be considered useful, to participate in meetings, except in decision-making phases.
6. All meetings shall be registered in a minute book, which following its approval by the CNPD shall be signed by the president and the secretary.

### **Article 27**

#### **Agenda of meetings**

1. The agenda of the ordinary meetings shall be established by the president who shall inform the other members with a minimum notice of two working days with regards the scheduled data for the meeting.
2. The issues to be discussed shall be included in the agenda of the meeting, proposed in writing by any member five days before the meeting, for as long as it shall be the competence of the CNPD.

### **Article 28**

## **Deliberations**

1. The CNPD shall only have a meeting and deliberations with the presence of, at least, two members.
2. The deliberations of the CNPD shall be taken on the basis of the majority of the members present, with the president having the decisive vote.

## **Article 29**

### **Publication of the deliberations**

The deliberations of the CNPD shall be published on Section II of the *Boletim Oficial*:

- a) The authorisation provided for in 1 g) of Article 10;
- b) The authorisations provided for in Article 23 2) of Law 133/V/2001 of 22 January;
- c) The deliberations which approve directives referred to in Article 10, 1 e) and k) of the present law;
- d) The deliberations which shall fix taxes in the provisions of Article 37 1) of the present law.

## **Article 30**

### **Complaints and petitions**

1. Complaints and petitions shall be directed in writing to the CNPD with the names and addresses of their authors confirming the identifications of these entities.
2. The right to complain may be exercised by post or email or by fax and other means of communication.
3. If the issue solicited is not the responsibility of CNPD, this must be directed to the competent entity with the knowledge of the complainant.
4. Unfounded complaints and petitions may be secured and archived by the member of the Commission to whom the process is directed.

## **Article 31**

### **Formalities**

1. Documents directed to the CNPD and processed shall not be subject to special formalities.
2. The CNPD may approve models or forms in paper or in electronic support system with the aim of permitting a better way of making requests of opinions or authorisation as well as the notifications of personal data processing.
3. Authorisation and notification requests presented to the CNPD, within the ambit of the law, must be signed by the controller of the personal data processing or by its legal representative.

## **Article 32**

### **Duties and substitution of the president**

1. The president:
  - a) Represents the Commission;
  - b) Oversees the support service;
  - c) Authorises the realization of expenditure within the limits legally understood in the council of ministers;
  - d) Establishes the rules of the distribution of processes presented to the Commission;
  - e) Submits to the Commission the plan of activities;
  - f) In general, ensures the compliance of the laws and the smooth running of the deliberations.
2. The president is substituted in his absence by the oldest member or by the member that the Commission appoints.

### **Article 33**

#### **Functioning of the CNPD**

The CNPD is committed by signature:

- a) of the president or other two members in the absence of other forms deliberated by the plenary of the CNPD;
- b) of who is responsible for the effect in the terms and scope of the respective mandate.

### **CHAPTER IV**

#### **Financial and property regime**

### **Article 34**

#### **General principle**

The financial and property management of the CNPD, including acts of private management shall be subjected to public account and shall be governed according to the principles of transparency and economicity.

### **Article 35**

#### **Revenues and expenses**

1. Revenues and expenses of the CNPD shall be contained in the annual budget.
2. Apart from what has been allocated to the CNPD on the budget of the *Assembleia Nacional*, its revenues include:
  - a) fees levied;
  - b) sales of forms and publications;
  - c) charges for certificates and access to documents;
  - d) fines in relation to provisions in the law;
  - e) balance of the previous year;
  - f) subsidies, subventions, co-participation, donations and legacy assets, awards, from private and public institutions/entities, both national, foreign and international;

- g) fines and periodic penalty payments applied for the failure to comply to individualised decisions.
  - h) Any other revenue that shall be attributed to it by law or contract.
3. Expenses of the CNPD constitute those related to charges resulting from its functioning as well as any other relative to the execution of its legal responsibilities.
  4. The annual budget, the respective modifications and the respective accounts approved by the CNPD.
  5. The accounts of the CNPD shall be subject to, in general terms, the control of the audit office.

## **Article 36**

### **Assets**

The assets of the CNPD shall comprise of all its properties, rights and guarantees that shall be attributed to it by law as well as those acquired after its creation, in order to better perform its functions.

## **Article 37**

### **Taxes**

1. A CNPD may charge fees:
  - a) for registering notifications;
  - b) for the authorisations granted under the provisions of Law 133/V/2001 of 22 January or other authorisations legally established.
2. The sum of the charges, proportionate to the complexity of the request or the service provided, shall be established by the CNPD.
3. In cases of confirmed economic insufficiency, payment shall be made in instalments by means of a resolution of the CNPD.

## **CHAPTER V**

### **Technical and expertise support**

## **Article 38**

### **Technical support**

1. The CNPD provides administrative services and technical support established in lieu of its plan activities and in relation to its budgetary possibility.
2. The administrative services and technical support shall be directed by a secretary with a Bachelor's degree and with recognised capability to perform the function.
3. The secretary is nominated by an order of the president with a favourable approval of the Commission respecting the legal requisites in performing the respective functions.
4. The appointment of the secretary shall be done on the basis of providing services for a period of three years, which can be renewable.

## **Article 39**

### **Competences of the secretary**

1. The Secretary shall
  - a) Serve as Secretary to the Commission;
  - b) Execute the decisions of the Commission in accordance with the orientations of the president;
  - c) Ensures the good organisation and functioning of the support services, in particular that relating to financial management, human resources, the premises and equipment in accordance with the orientations of the president;
  - d) Elaborate the budget as well as the respective changes and ensure their execution;
  - e) Elaborate the annual report.
2. In his absence and impediments, the secretary shall be substituted by a qualified staff of the CNPD appointed by the president with favourable approval of the Commission.

## **Article 40**

### **Regime of Personnel**

1. Staff of the CNPD shall be subject to a legal regime of individual work contract and shall benefit from the general regime of Social Welfare.
2. The CNPD shall have its own workforce established by a resolution of the *Assembleia Nacional* by means of which the respective functional content shall be defined.
3. Salary of the staff shall be established by an internal regulation within the limits stipulated by the *Assembleia Nacional*.
4. The CNPD may be part of collective regulatory instruments of work.
5. The recruitment of the workforce shall be preceded by public announcement, obligatorily advertised on two widely read national newspapers, and by means of a public exam.
6. The conditions of providing services and work discipline shall be defined on a regulation approved by the CNPD respecting imperative legal provisions of the individual work contract regime.

## **Article 41**

### **Supervisory functions**

1. The workers, agents and representatives of the CNPD as well as qualified people and entities duly accredited who performed supervisory functions within the scope of their duties and show proofs of that quality shall be equated as agents of authority and benefit the following privileges:
  - a) Have access to premises, equipment and services of entities that shall be subject to the supervision of the CNPD;
  - b) Request documents for analysis and written information;

- c) Identify all individuals that infringe on legislation, whose observation must be respected for the further opening of procedures;
  - d) Seek the collaboration of competent authorities when they deem it necessary in the discharge of their functions.
2. Identification cards, whose model and conditions of emission form part of the resolution of the *Assembleia Nacional*, shall be attributed to CNPD staff, its agents as well as qualified people and entities that are duly accredited to perform functions provided for above.

## **Article 42**

### **Incompatibilities**

Staff of the CNPD shall not work or provide services, paid or not, to entities that are subject to CNPD supervision or others whose activities clash with the authorities and functions of the CNPD.

## **Article 43**

### **Mobility**

1. Workers from public administration (civil servants) and local government as well as workers and administrators from private companies may be invited to be part of ordinary commission of service, for specific tasks, for assignments or requisition, to perform functions at the CNPD with a guarantee of their place of origin and the acquired rights, taking note of the fact that their period of service at the place of origin shall be considered as service rendered, hence supporting CNPD with regards the inherent expenses.
2. Without prejudice to the provisions in 1 above, CNPD workers may perform functions in other entities by means of transfers, requisition or others as provided by law, with a guarantee of your place of origin and the acquired rights, considering the period of service counts as effectively given at CNPD.

## **Article 44**

### **Expert consultancy**

1. For as long as the budget limit is respected, the CNPD shall contract individuals or groups as consultants, in the regime of providing services, for the realisation of studies or the provision of technical opinion in relation to issues related to legal responsibilities of the CNPD as provided for in the present law.
2. The studies and technical opinions elaborated by the people identified in 1 above shall not be binding upon CNPD, except the ratification of the same expressed by the CNPD.

## **CHAPTER VI**

## **PARLIAMENTARY REPORT AND JUDICIAL CONTROL**

### **Article 45**

#### **Parliamentary report**

1. The CNPD must inform the *Assembleia Nacional* through monthly reports about its deliberations and activity.
2. The CNPD shall send to the *Assembleia Nacional*, to the Parliamentary Commission responsible for Fundamental Rights, a yearly report on its activities explaining legislative issues, administrative and financial evaluated in the exercise of its functions, preceding the audience with members of the CNPD, for discussion.
3. The debate shall be realised sixty days after the commission has received the report on its activities and its accounts.
4. Members of the CNPD shall appear before the competent commission of the *Assembleia Nacional* to present information and clarifications on its activities, as requested by the Parliament.

### **Article 46**

#### **Judicial control**

1. The activity of the mandatory and representative organs of the CNPD shall be subject to administrative jurisdiction, in the terms and limits provided for in the law.
2. The sanctions for illicit practices of a mere social statute law shall be contestable in the competent law courts.
3. From their decisions and deliberations appeals shall be made through the law courts or arbitral courts as provided for in the law.

## **CHAPTER VII**

### **Final and transitory provisions**

#### **Article 47**

#### **Installation regime**

The CNPD shall operate under a regime of installation for a period of sixty days following assuming office of its respective members for the effects of naming a secretary, fixing the premises, elaborating and approving its budgets, elaborating and approving its internal regulations, definition of support service, among other indispensable issues of its functioning.

#### **Article 48**

#### **Website**

1. The CNPD shall have a website with all the relevant information, particularly, the laws that establish it, the regulations, the deliberations and orientations as well as the composition of its organs, the plans, the budget, the reports and the accounts of the

- last two years of its activities and all decisions that do not refer to the current management.
2. The website shall serve as space for the dissemination of the models and forms for the making of online requests and the gaining of online information within legally acceptable terms.
  3. The nature of the penalties or ruling communicated to the CNPD, in the provisions of Article 6 3), shall be obligatorily published on the website of the CNPD.

#### **Article 49**

##### **Logo**

The CNPD may use a logo whose model shall be approved by a plenary of the members of the Commission for the identification of its documents and all the services that it relates with.

#### **Article 50**

##### **Existing data base**

Public and private entities that hold a personal data base shall be given 180 days to submit the information they contain to the CNPD for supervision, as provided by law.

#### **Article 51**

##### **Entry into force**

This Law shall come into force thirty days following its publication, except the provisions have budgetary implications, whose coming into force shall be postponed to 1 January 2014.

Approved on 24 July 2013.

The President of the *Assembleia Nacional*, *Basílio Mosso Ramos*.

Enacted on 9 September 2013.

Hereby published.

The President of the Republic of Cape Verde, JORGE CARLOS DE ALMEIDA FONSECA.

Counter-signed on 10 September 2013.

The President of the *Assembleia Nacional*, *Basílio Mosso Ramos*.

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