

## Slide 1

Good afternoon

## Slide 2

The legislation for data protection is quite vast at the european level.

The article 35 of the Portuguese Constitution gives us the right of [?]

## Slide 3

Charter of Fundamental Rights of The European Union has made the reservation of private intimacy of data protection independent. Under Article 7, to define respect for private and family life, and Article 8, to define the protection of personal data.

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The Law 67/98 of 26 October, the Law on the Protection of Personal Data

\* transposes the Directive 95/46/EC

\* presents a definition of personal data:

[Quote from slide]

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- The law and the processing of data has to be done in a **transparent manner** (the data subject must know perfectly well what is the purpose of the processing of personal data, why and for what purpose, who analyzes and stores the data, when, among others, it is therefore an active principle)
- In the respect to the **safeguard of our private lives** (the privacy must be safeguarded in the manipulation of personal data),
- **the Rights, Freedoms and Guarantees** (Article 35 of the Portuguese Constitution itself, which is included in the scope of fundamental rights).

The principles for processing personal data are set out in Article 5 of the Personal Data Protection Act (LPDP), Law 67/98:

- **Principle of legitimate purpose:** what is to be done with the data, in a clear manner, and why the data is necessary. If this is not not done, there is no sense in providing the data.
- **Principle of transparency** - the data subject must know **how, what, in what way**, explicitly, the data will be processed.
- **Proportionality principle** - analysed in the light of the purpose of the processing of the data.

In short, these were the most important aspects of the Directive and data protection law. This small contextualization serves to show that we have had data protection legislation at European level **since 1995**. The General Data Protection Regulation should not be a legal document that frightens organizations.

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(PT) The need to update legislation due to technological developments, the challenges of globalisation and the decisions on this issue at the European Court of Human Rights makes it necessary to legislate on these matters with a regulation.

The distinction between the **regulation** and the **directive** is essentially:

- the regulations that do not need transposition have direct application in the legal systems of the member states
- directives have to be transported and give more room for internal regulation of the member states.

The regulations are intended to bring about greater harmonisation and uniformity in the transposition and application of the law.

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The discussion and approval of the general regulation on data protection was an arduous and difficult task since it was under discussion in the European Parliament for four years.

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**Who does it apply to? The Regulation applies:**

- to whom to sell goods and services to citizens of the European Union;
- to those who operate on a website that uses technology to monitor people;
- collect any kind of data that may include EU citizens;

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The General Data Protection Regulation had a paradigm shift from **heteroregulation** to **self-regulation**. One example of this is that previously it was necessary to ask the National Data Protection Commission, the body responsible for these matters, for authorisation to install video surveillance cameras in buildings,

But today this is no longer necessary, but does not mean that they do not have to comply with strict rules on the use of these devices. It is the organisations themselves that have to ensure the legal use of personal data.

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The main objective of the regulation is to give citizens power and control over their personal data.

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The regulation has brought some novelties such as the **extension of the concept of personal data:**

information relating to an identified or identifiable natural person ('data subject'); a natural person is considered identifiable if it can be identified, directly or indirectly, in particular by reference to an identifier, such as

- name
- an identification number
- location data
- identifiers by electronic means
- one or more elements specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

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The Regulation introduces:

- **Right to data portability:** the purpose of that right is to strengthen citizens' control over their own data, where the processing of personal data is automated, the data subject should be allowed to receive personal data relating to him or her which he or she has provided to a controller in a **structured, machine-readable** and **interoperable** format and to transmit them to another controller. Data controllers should be encouraged to develop interoperable formats that enable data portability.

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- **the impact assessment** - to be carried out when a certain type of processing, in particular using new technologies and taking into account its **nature, scope, context** and **purposes**, is likely to entail a high risk to the rights and freedoms of natural persons, the controller shall carry out an impact assessment of the envisaged processing operations on the protection of personal data **before starting** the processing.

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- **the Data Protection Officer** - is an independent person appointed by organisations
- - who are responsible for or act as sub-contractors for the processing of personal data
  - - and his/her role will be to supervise and advise the company on the obligations contained in the Regulation.

It must be a person who is **specialized in technology** and **data protection law**.

His/Her appointment is only mandatory in some situations, e.g. hospitals.

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- the right to erase data or the **right to be forgotten** - is the right of the citizen to ask the organisation that owns his/her personal data to erase and forget all of it.

This right arose from a judgment called the 'Costeja judgment'. Costeja is a Spanish citizen who brought an action against google, where he asked google to forget him. Costaja in a Google search discovers a news item from 1998 in which he had a debt involving a property, that news reported by La Vanguardia,

on the page of announcements of public auctions. However, he had paid off the debt without the need for a judicial sale. In 2009, he went to the newspaper administratively to ask that his name no longer appear on the search engine in connection with this fact. The answer was no and the argument was that the publication was due to a command from the Spanish Ministry of Labour and Social Security. In 2010, contacted administratively, Google Spain, so that the news the withdrawal of their data from the search engine. The request was rejected by the company. In March of the same year, the Spaniard lodged a complaint with the Spanish Data Protection Agency (AEPD) against the company that owned the newspaper and also against Google Spain and Google Inc. Corteja wanted the electronic pages on which his data were available to be deleted or altered so that they would no longer appear or would not be read by third parties. According to him, there was no longer any sense in the disclosure of the data in the enforcement proceedings because they had been extinct for several years. The Spanish data protection authority rejected the request in relation to the newspaper, since it published only on the basis of a request from the public prosecutor's office, but granted the request in relation to google, as it was subject to data protection legislation. The newspaper and Google went to court, the court felt the need to refer the case to the European court because it involved Directive 96/45/EC. The court found that search engines' actions in this sense may significantly affect "the fundamental rights to privacy and the protection of personal data". The European Court upheld the Court's request for

erasure. It is a controversial decision; some argue that it calls into question the right to freedom of expression, for example.

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- **the consent** - has stricter rules to be considered valid. For data processing to be lawful, it must fall within one of the six forms of requesting personal data:

- consent,
- in the context of the performance of a contract,
- necessary for the performance of a legal obligation,
- in the context of vital interests of the data subject
- public interest
- legitimate interests.

### Slide 18

- **The notification of personal data breaches** - is the obligation that organizations have to communicate to the CNPD, through the form available on the website, whenever there is a personal data breach. Organizations have **72 hours to communicate** after knowing them. By 22 February 222 personal data breaches had been reported since 25 May 2018.

### Slide 19

Citizens can complain to the national authorities and to this end they should use their postal or e-mail address by addressing their complaint to [geral@cnpd.pt](mailto:geral@cnpd.pt) and putting

the subject of the mail “Queixa” (complaint in portuguese). Citizens should submit all the documentation they have on the subject and send it to the Commission.

## **Slide 20**

Thank you!

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