Chapter 7
Redressing Violations of Privacy: The Case of Portuguese “E-Invoice”

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ABSTRACT

The chapter discusses the role of CNPD (Comissão Nacional de Proteção de Dados) in case of violation of privacy, like dissemination or revelation of personal data by a public/private organization or entity. About this subject, the CNPD can issue a recommendation to the Portuguese Treasury to take some measures to strictly protect the security of the personal information using the Portuguese “E-Invoice.” Portuguese people must be protected against the misuse of personal data by the use of the “E-Invoice.” A Security System Administrator continuously monitors the network and all data traffic to prevent any misuse or abuse of the system. A prerequisite for trust and acceptance of these information systems is that appropriate data protection measures are implemented against possible misuse of personal data decreasing the risks in its utilization. Protective measures should be taken by the Treasury referring additional procedures against the misuse of data because the administrative control system is inefficient regarding unauthorized access, disclosure, misuse of localization data or loss, modification, and appropriation of information linked with the use of the Portuguese “E-Invoice.”

INTRODUCTION

This chapter seeks to assess the legal responsibility of the System Administrator in a case of dissemination or revelation of personal data to the market by a public or governmental entity like the online “Portal of Portuguese Treasury.” This matter is discussed in three parts: Firstly, it is explained who are the principal stakeholders (the tax payers, the Treasury, the system administrator of the portal and the CNPD). The second part presents a perspective of applying with correction...
the principle of proportionality. For example, the E-Invoice project should be abandoned when it is proved that its use is groundless and excessive by breaching privacy rights, or only when it compromises the purpose for which the project was created. Therefore, the principle of proportionality can explain with accuracy the responsibilities of the System Administrator and the CNPD before the control of the personal data flow in an organization. In a third part, the difference between the security policy of the E-Government and the E-Invoice is presented. An Administrative Security system continuously monitors the network and all data traffic to prevent any misuse or abuse of the system. A prerequisite for trust and acceptance of these information systems is that appropriate data protection measures are implemented against possible misuse of personal data decreasing the risks in its utilization.

THE PORTUGUESE “E-INVOICING SYSTEM”

Noting that there is a relation between the grey economy and public finances, the Portuguese Government, in the purpose of reducing the public debt, has implemented a system of controlling the taxpayers by an E-Invoice system. By the Decree-Law number 198/2012, of August 24, which had entered into force on January first of 2013, the Portuguese Government has issued the “E-Invoice.” This system provides a deduction from the IRS collection due by taxable persons of an amount corresponding to 5% of the value added tax (hereinafter ‘VAT’ - IVA in Portugal) borne by each member of the household, with the overall limit of 250 euros free.

To provide that the above conditions are met, the invoice with VAT included received by the Tax and Customs Authority (AT in Portugal) must be framed in the following sectors of activity: (a). maintenance and repair of motor vehicles; (b). maintenance and repair of motorcycles, parts and accessories; (c). accommodations, catering and similar services; (d). activities of hairdressing salons and beauty institutes. In these invoices it must stating the tax identification number of purchasers who must therefore always require to issuers their inclusion. It should be noted that, in accordance with Law, since the first of January of 2013 it is compulsory to invoice issue, even in cases where final consumers does not request it. The tax return (IRS) of the household should be delivered within the time limits laid down in article 60 of the IRS Code by electronic transmission of data, in April (only taxpayers that have received or have been placed at their disposal incomes in categories A and H and in may, in all other cases. The Authority of the Treasury had foreseen by the law a value of the incentive that is calculated automatically, until 31 January of the year following the issue of invoices, and based on the elements that are reported by service providers or by purchasers. Throughout the year, taxpayers may, at any time, follow the evolution of the value of the incentive through the online service, “Finance Portal.”

The Authority of the Treasury allows visualizing the amount of the incentive on the “Finance Portal,” until the day 10 of February of the year following the year of invoice issue. If the taxpayers are not agree about the calculation of the amount of the incentive they can present an administrative claim, by the end of March of the year following the invoices issue, in accordance with article 68 of the code of tax proceedings and processes (Tax Procedural Code), mutatis mutandis. The invoices which have not been communicated regularly to the Authority of the Treasury by issuers should be collected in the “Finance Portal” by purchasers, and only in such cases, they should keep them in their possession for a period of 4 years, counted from the end of the year in which the acquisition occurred. The Authority of the Treasury can act in cases of verified discrepancy between the elements reported by acquirers and issuers. If there is an evidence of that the invoices do not corre-

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