

NATIONAL COMMISSION

DATA PROTECTION

OPINION/2020/42

I. Order

Caixa Geral de Aposentações (CGA) submitted a draft protocol to be signed with Instituto da Segurança Social, I.P. for consultation with the National Data Protection Commission (CNPd). (ISS), for the exchange of information within the scope of the extraordinary pension update and the payment of the extraordinary supplement for minimum pensions.

The CNPD issues an opinion within the scope of its attributions and powers as an independent administrative entity with powers of authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and paragraph 4 of the article 36 of Regulation (EU) 2016/679, of 27 April 2016-General Regulation on Data Protection (GDPR), in conjunction with the provisions of article 3, paragraph 2 of article 4 .º and paragraph a) of paragraph 1 of article 6, all of Law no.

The purpose of the protocol under consideration is to define the terms of collaboration between the granting parties, with a view to the interconnection of personal data of CGA subscribers and social security, by electronic means, for the purposes of the extraordinary updating of pensions, and for the purposes of payment of the extraordinary supplement for minimum disability and old-age pensions within the scope of the two regimes, (cf. Clause Two).

The Instituto de Informática, I.P. is also a party to this protocol, as ISS subcontractor, in view of its legal attributions regarding the management and operation of technological infrastructures and information systems of the services and bodies under the Ministry of Labour, Solidarity and Security. Social, under the terms of subparagraph c) of no. 0 2 of article 3 of Decree-Law no. 0 196/2012, of August 23.

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Process PAR/2020/24 lv.

NATIONAL COMMISSION

DATA PROTECTION

The list of personal data to be transmitted by the CGA to the ISS, and vice versa, is exactly the same and appears,

respectively, in Annexes I and II.

In Clause Five, the technical conditions for access to information are established, only regulating the conditions for the connection of the CGA to the Instituto de Informática, IP., that is, the protocol continues to be silent with regard to the transmission and reception of the social security information.

In n.01 of this Clause, Instituto de Informática, IP., and CGA undertake to develop the necessary actions to guarantee the transmission of the data contained in annexes I, II, III and IV of this protocol. Only the Annexes were sent to the CNPD 1 and II, with no knowledge whatsoever of the matter contained in the remaining annexes.

The subcontractor's obligations are also described (Clause Eight).

In Clause Nine, a delegation is made to the subcontractor for the choice of any subsequent subcontractors.

In Clause Thirteen, under the heading "Applicable Legislation", it is foreseen that the grantors observe the legal provisions regarding the protection of personal data, namely respecting the purpose for which the consultation was authorized, which must be limited to what is strictly necessary. , not using the information for other purposes, not transmitting it to third parties and taking the necessary security measures.

## II. appreciation

The protocol in question aims to regulate the terms under which the CGA and the ISS exchange personal data, mutually transmitting information on subscribers and pensioners for the extraordinary updating of minimum pensions and for the purposes of paying an extraordinary supplement, provided for in the Law. no. 0 71/2018, of 31 December, which approves the State Budget for 2019. The communication of personal data constitutes a processing of personal data, within the meaning of article 4, paragraph 2), of the RGPD.

### a) Lawfulness of treatment

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Process PAR/2020/24 2

NATIONAL COMMISSION

DATA PROTECTION

The lawfulness of the treatment, with regard to the extraordinary update of pensions, will be based on article 71 of Law No.

(see paragraph 1), which lists the Social Security and CGA pensions covered (see paragraph 3), with paragraph 4 establishing

the interconnection of data between the CGA and the ISS, for the purposes of transmitting the relevant information, interconnection whose terms and conditions are regulated in the present protocol (under the terms of paragraph 5 of the same article). As for the extraordinary supplement applicable to minimum pension pensioners, created by n. 0 1 of article 114 of Law no. 0 71/2018, of December 31, (which approved the State Budget for the year 2019), the matter is regulated by Decree-Law no. protocol for the interconnection of information. This diploma, in paragraph 3 of article 4, extends the application of the regime to subsequent years, with Ordinance no. 0 29/2020, of 31 January, fixed the values of the complements for the year 2020. Therefore, this processing of personal data has as a condition of lawfulness the fulfillment of a legal obligation, provided for in paragraph c) of no. 1 of article 6 of the GDPR, and compliance with paragraph 3 of the same article was also partially verified.

#### b) Principles applicable to processing

In view of the legally established eligibility criteria, it is considered that the interconnected personal data are adequate and necessary to fulfill the purpose, in compliance with the principle of data minimization, according to subparagraph c) of paragraph 1 of article 5 of the GDPR

However, the protocol is silent on the regularity of data transmission and should regulate this aspect.

With regard to records for auditing purposes (audit logs), provided for in paragraphs 5 and 6 of Clause Five, it is considered that the control of access to information received, either by the CGA or by the ISS, it is necessary.

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Process PAR/2020/24 2v.

NATIONAL COMMISSION

- DATA PROTECTION

However, logs must also record, specifically within the scope of this protocol, the information sent, allowing tracking of what was transmitted and when.

#### c) Rights of holders

The protocol does not provide for any clause listing the rights of the holders, nor is there any advantage in including such a standard, which would be limited to repeating legal norms.

It could be relevant, however, to regulate compliance with the obligation provided for in article 19 of the GDPR, which clearly

applies in the context of this protocol in which personal data is transmitted, establishing an expedited means of communicating to the other controller (CGA or ISS), as recipient of the information, any request for rectification, erasure or limitation of treatment by the data subject.

#### d) Subcontractors

As for the content of Clause Nine, on the delegation to Instituto de Informática, IP, of the choice of any subsequent subcontractors, provided that it makes available to those responsible an updated list with their identification, accompanied by the applicable contractual conditions, maintaining the right to oppose such further subcontracting.

It is understood that this wording is too general and permissive, not complying with the legal requirements of subcontracting provided for in article 28, no.

2 and paragraph 4 of the GDPR, as the controller's option for what appears to be a general authorization for subsequent subcontracting does not preclude the processor's obligation to be able to carry out further subcontracting only if those processors provide 'sufficient guarantees implementation of appropriate technical and organizational measures (...)'.  
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Process PAR/2020/24 3

NATIONAL COMMISSION

DATA PROTECTION

In addition, a general authorization is not a blank letter, so there should, at the very least, be a reference to the requirements of the GDPR.

#### III. Conclusion

With the introduction of the changes identified above, the CNPD considers that there are no impediments to the conclusion of the protocol between Caixa Geral de aposentações and the Social Security Institute.

The final text of the protocol, after signature, must be sent to the CNPD for knowledge.

Lisbon, April 1, 2020

Filipa Calvão (President, who reported)

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