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## NATIONAL DATA PROTECTION COMMISSION

OPINION/2019/53

### I. Order

The Office of the Secretary of State for Justice asked the National Data Protection Commission (CNPd) to issue an opinion on the draft Ordinance that aims to regulate electronic communications between judicial courts and the Institute for Financial Management of Social Security, I.P., as the managing entity of the Guarantee Fund for Alimony Due to Minors (hereinafter the Fund), under Law No. 75/98, of 19 November and Decree-Law No. .

The request made and the opinion issued now derive from the attributions and powers of the CNPD, as the national authority for controlling the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and paragraph 4 of article 36 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of article 3, no. Article 4(2) and Article 6(1)(aj), all of Law No. 58/2019, of 8 August.

The assessment of the CNPD is, of course, limited to the rules that provide for or regulate the processing of personal data.

### II. appreciation

Decree-Law No. 97/2019, of 26 July, which came into force on 16 September 2019, amended the electronic procedure for judicial proceedings provided for in the Code of Civil Procedure, and the CNPD issued a statement on the draft diploma in question through Opinion No. 2019/22, of 15 April.

Pursuant to paragraph 5 of article 132 (Electronic Process) of the aforementioned Decree-Law, communications between courts and public entities may be carried out electronically, by sending structured information and interoperability between the information system of support for the activity of the courts and the information systems of the aforementioned entities, under the terms set out in the decree of the members of the Government responsible for the area of justice and for the public entity in question, which is now being analysed.

As follows from the preamble of this draft Ordinance, with the publication of Decree-Law No. 97/2019, of 26 July, the conditions for the implementation of

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various measures of the Simplex+ Program, namely those concerning the simplification and dematerialisation of communications between the courts and public entities.

This is what happens with the measure «Fund for the Guarantee of Food for Minors+Agil», implemented through the present Ordinance project that aims to simplify and speed up the communications of the judicial courts addressed to the Guarantee Fund for Alimony Due to Minors, namely, notification of the decision to fix the benefits to be provided by the Fund, notification of the decision that determines the maintenance of the benefits payable by the Fund and notification of the decision that determines the cessation of payment of the benefits payable by the Fund.

It is noted, however, that article 2 of the draft Ordinance is limited to mentioning that such communications are carried out electronically, by sending structured information and electronic documents between the support system for the activity of the courts and the information system used by the Fund. However, this normative provision proves to be manifestly insufficient to guarantee compliance with the principles relating to the processing of personal data, in particular the principle of minimization of personal data, implementation of the principle of proportionality, enshrined in subparagraph c) of paragraph 1 of the Article 5 of the GDPR.

It is therefore important that the draft Ordinance precisely defines the terms in which such processing of personal data can take place, specifying the categories of personal data involved in the transmission of information between the judicial courts and the Institute for Financial Management of Security. Social, I.P., and specifying the types of documents transmitted electronically. Otherwise, the CNPD cannot assess or conclude on the proportionality of the data to be processed, under the terms of Article 5(1)(c) of the GDPR. The CNPD therefore recommends densifying Article 2 of the draft Ordinance in order to contain the aforementioned specifications.

It should be noted that article 2 of the project states that the sending of information between the information system supporting the activity of the courts and the information system used by the Fund will be carried out under the terms of the protocol to be signed between the Institute of Financial Management e Equipamentos da Justiça, I.P., the Instituto de Informática, I.P., and the Instituto de Gestão Financeira da Segurança Social, I.P., without, however, mentioning the prior consultation of the CNPD.

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The CNPD recalls that the protocols, insofar as they correspond to legal acts of public entities that define binding rules for the parties regarding the processing of personal data, have the nature of an administrative regulation. To that extent, under the terms of Article 36(4) and Article 57(1)(c) of the GDPR, they must be subject to prior assessment by the CNPD. So that there is no doubt as to this duty, the CNPD suggests its clarification in the text of the article.

In turn, article 3 of the draft Ordinance raises particularly relevant issues regarding the security of the communications in question, since it only states that the support systems for the activity of the courts and the information system used by the Fund guarantee respect by the rules of security and access to information in order to ensure the confidentiality of data.

It is strange that the standard is completely silent on the security measures involved in the transmission of data, without specifying, from the outset, whether the transmission is carried out on a public or private network. It is still strange that the normative precept uses a notoriously vague formulation to refer to data confidentiality without specifying the way in which it is guaranteed. Thus, in compliance with the principle of integrity and confidentiality provided for in subparagraph f) of paragraph 1 of article 5 of the RGPD, the CNPD recommends amending article 3 of the draft Ordinance, in order to contain the measures of security involved in this processing of personal data.

Finally, paragraph 2 of article 3 of the draft Ordinance refers to “electronic records necessary for the knowledge of the communications made”, it is not clear whether these records are intended to record activity (iogs). It should be noted that information systems must have mechanisms that allow recording and auditing the activity, namely that concerning the transmission of information to other bodies. Due to the importance that the registration (iog) of activity has in the scope of audits and inspection, it is suggested to include in this article the duty to record such interactions.

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### III. Conclusion

On the above grounds, in order for the Draft Ordinance to comply with the legislative command contained in paragraph 5 of article 132 of Decree-Law No. 97/2019, of July 26, the CNPD recommends:

1 - The densification of article 2 of the draft Ordinance, specifying the categories of personal data involved in the transmission

of information between the judicial courts and the Institute of Financial Management of Social Security, I.P., as well as the types of documents transmitted electronically;

2 - The express consecration of the obligation for the protocol referred to in the same article to be subject to prior appraisal by the CNPD;

3 - The reformulation of article 3 of the draft Ordinance, including security measures involved in this processing of personal data;

4-the clarification of paragraph 2 of article 3 in the sense of including the duty of registration (fog) of activity.

Lisbon, September 17, 2019

Filipa Calvão (President)