

National Data Protection Commission

OPINION/2023/11

I. Order

1. The Supervisory Authority for Insurance and Pension Funds (ASF) asked the National Data Protection Commission (CNPD) to pronounce on the draft Regulatory Standard aimed at establishing prior registration procedures for the exercise of regulated functions, revoking Regulatory Standard No. 3/2017-R, of May 18.

2. The CNPD issues an opinion within the scope of its attributions and powers as an independent administrative authority with authoritative powers to control the processing of personal data, conferred by paragraph c) of paragraph 1 of article 57, in conjunction with paragraph b) paragraph 3 of article 58, and with paragraph 4 of article 36, all of Regulation (EU) 2016/679, of April 27, 2016 - General Regulation on Data Protection (hereinafter GDPR), in conjunction with the provisions of Article 3, Article 4(2) and Article 6(1)(a), all of Law No. 58 /2019, of August 8, which implements the GDPR in the internal legal order.

II. Analysis

3. Pursuant to paragraphs a), b) and c) of paragraph 13 of article 43 and paragraphs d) and e) of paragraph 2 of article 77 of the legal regime for accessing and carrying out insurance activities and reinsurance company (RJASR), approved by Law No. 147/2015, of September 9, it is incumbent upon the ASF to determine, by regulatory rule, the content and format of the application, the elements subject to registration and the documents that support the procedures of registration, the persons who effectively direct, supervise, are senior directors and those responsible for key functions, as well as the responsible actuary, insurance and reinsurance undertakings, as well as branches of insurance or reinsurance undertakings of a third country that carry out activity in Portuguese territory. Article 43 of the RJASR also applies to entities participating in an insurance or reinsurance group in which the ASF holds the role of supervisor of the group [cf. Article 43(12), Article 222(1)(c), Article 232(2)(c) and d), Article 283(1) and Article 297 of the RJASR],

4. With regard to pension fund management companies, the ASF is also responsible for defining the procedures for registering the people who effectively manage, supervise or are responsible for key functions, pursuant to paragraph 10 of article 73 of the regime constitution and operation of pension funds and pension fund management entities (RJFP), approved by Law No.

27/2020, of 23 July.

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5. In turn, pursuant to paragraph 4 of article 37 and paragraph 1 of article 38 of the legal regime for the distribution of insurance and reinsurance (RJDS), approved by Law no. /2019, of January 16, is subject to registration, under the terms of article 43 of the RJASR, the person responsible for applying the policies and procedures for adapting the members of the management body in charge of the insurance and reinsurance distribution activity and of the people directly involved in these activities, as well as the person responsible for applying the policies and procedures for adapting the members of the management body in charge of the distribution activity within the scope of pension funds and the people directly involved in this activity, (cf. article 3. of the RJDS and Article 172(2) of the RJFP).

6. Thus, under the terms of the preamble, the ASF decided to draw up the draft regulatory rule on prior registration for the exercise of regulated functions, in order to adapt the registration procedures to the applicable legal framework and adapt the ASF procedures to the legal regime applicable to the processing of personal data and the citizen card.

7. Pursuant to article 1 of the Project, the purpose of the regulatory norm is to establish the procedures for registering, with the ASF, the persons referred to in article 2 of the same diploma.

8. The registration is requested from the ASF, prior to the designation, upon request of the entity or the interested party and must be accompanied by the questionnaire, duly completed, according to the model in Annex I of the Project, and the recognition of the signature or qualified electronic signature affixed by the person for whom registration is requested in the statement in the questionnaire or, alternatively, a simple photocopy, with a visible signature and civil identification number, of the identification document (identity card, citizen card or equivalent document), with express mention of the authorization the

use of this means to confirm the respective identity (cf. subparagraph b) of no. 1 of articles 3 and 5 and subparagraph b) of article 6 of the Draft).

9. The CNPD expresses, once again¹, the reservations that the copy of an identification document raises regarding the value of proof of identity, since the scanning of an identification document is easily manipulated, thus not guaranteeing the veracity of the data, in disrespect for the principles of accuracy and completeness of personal data enshrined in paragraphs d) and f) of paragraph 1 of article 5 of the RGPD. It is reaffirmed that the simple copy of identification documents constitutes a document without any legal value

¹ See Opinion No. 3172017, of May 17, 2017, available at
and also Opinion No. 142/2020, of December 3, 2020 available
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evidence, precisely because of its ease of handling, which is why it is recommended to revise paragraph b) of paragraph 1 of article 3 and of article 5 and paragraph b) of article 6 of the Project.

10. It should be noted that the request for prior registration must also be accompanied by a criminal record certificate from the country of origin and, if different from this, from the country of residence or equivalent document, of the person subject to registration, issued in the last three months. Now, the project follows the provisions of paragraphs 8 to 12 of article 68 of the RJARS and paragraphs 8 to 12 of article 113 of the RJFP regarding the obligation to present a criminal record for proof of the suitability of the persons who effectively run the insurance or reinsurance company or pension fund management company, supervise it or are responsible for key functions or perform key functions, whereby the basis for their collection lies in paragraph c) of the Article 6(1) in conjunction with Article 10 GDPR.

11. In turn, Annex I «Questionnaire on individual suitability» comprises information regarding the processing of personal data, embodying the right to information of data subjects provided for in articles 13 and 14 of the RGPD. Here, information is given regarding the person responsible for processing personal data, its basis and purpose, data retention period, recipients, lack of automated individual decisions, data subject rights, contacts and form of complaint.

12. Without questioning the detailed information in Annex I, it is only important to observe, in relation to subparagraph d)2, that the legal regime of professional secrecy invoked here is not to be confused with the grounds for the lawfulness of data communication. In fact, although article 32 of Law No. 147/2015, of September 9, in its current version, regulates the professional secrecy of the members of the ASF bodies and of the people who exercise or have exercised functions in it, this is just a duty of special confidentiality that falls on certain professional categories, not directly legitimizing the sharing of personal data. Therefore, it is recommended to reformulate this item, eliminating the reference to professional secrecy, in order to clarify its meaning - suggesting that the sharing of personal data be based directly on article 35 of the same legal diploma.

13. Also in paragraph d) it is stated that «ASF may share data with other entities or supervisory authorities from other Member States and third countries, provided that they offer guarantees of protection of personal data equivalent to those practiced by ASF». Such a provision appears insufficient,

2 «The personal data collected may be shared under the terms of the legal regime of professional secrecy and exchange of information applicable to the ASF. Access to personal data by people who perform duties at ASF is limited to certain categories of professionals for whose activity they are necessary»

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not complying with Article 14(1)(f) of the RGPD. In fact, from this paragraph it follows that the controller must inform the data subject of the transfer of personal data to a third country, indicating the existence of an adequacy decision adopted by the Commission pursuant to article 45 of the RGPD, or, failing that, reference to the appropriate or suitable guarantees and the means of obtaining copies thereof, or where they have been made available. It should be noted that in this case there must be a collaboration agreement that provides adequate guarantees and provides for the opposable and effective rights of the data

subjects, as well as effective corrective measures, under the terms imposed by article 46 of this Union diploma. It is therefore important that Annex I specify the type of information to be provided to the holder in the event of transfer of data to a third country.

14. In turn, Section 3 of Annex I respects personal information and contains the identification and contact details of the person subject to registration, including the full and professional name, sex, place of birth, nationality, type, number and validity of the identification document, NIF, personal residence, professional address, personal and professional telephone contact, personal and professional email address. Section V deals with academic qualifications and professional training and section VI concerns information on the suitability of the person subject to registration. Finally, section VII deals with the independence and incompatibilities of the person subject to registration. Thus, with regard to the data described in sections 3 to 7 of Annex I, the ASF needs this information in order to exercise its supervisory powers, and therefore its processing is legally justified in Article 6(1)(e) of the GDPR. The processing of this personal data is appropriate and necessary for the exercise of supervisory powers by the ASF, provided for in articles 190 and 191 of the RJFP and articles 20 and 297 of the RJASR), in compliance with the principle of minimization data enshrined in Article 5(1)(c) of the GDPR.

III. Conclusion.

15. Under the terms and on the grounds set out above, the CNPD recommends:

The reformulation of item b) of paragraph 1 of article 3 and article 5 of the Draft regulatory rule in the part relating to the presentation of a simple photocopy simple photocopy, with a visible signature and civil identification number, of the document identification (identity card, citizen card or equivalent document) of the person for whom registration is requested, favoring other forms of proof of identity;

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B. The clarification of paragraph d) of Annex I, eliminating the reference to professional secrecy, invoking only the legal regime for the exchange of information applicable to the ASF; It is

w. The expansion of paragraph d) of Annex I, specifying the type of information to be provided to the holder in the event of data transfer to a third country.

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