

National Data Protection Commission

OPINION/2023/44

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 that makes the fifth amendment to Regulatory Standard No. 14/2010- R, of 14 October, which regulates the central registration of life insurance contracts, personal accident insurance contracts and capitalization operations with beneficiaries in the event of the death of the insured person or the subscriber.

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. Regulatory Standard No. 14/2010-R, of October 14, regulates the central registration of life insurance contracts, personal accident insurance contracts and capitalization operations with beneficiaries in the event of the death of the insured or of the subscriber, establishing rules on the frequency, form and terms of transmission of information by insurance companies for the purposes of that registration and the respective update, as well as on the form and terms of access to information by interested parties, also approving the models of certificates of content of the data contained in the register.

4. Under the terms of the preamble, it is necessary to clarify the requirements for access by interested parties to the information contained in the central register, namely to ensure the correct identification of the applicant when access to the data subject is requested in a non-face-to-face manner, but also allowing the use of information technologies and the use of electronic documents.

5. In this sense, among other changes, it is now required to recognize the holder's signature on the respective form or to send a certified copy of the identification document when the right of access is exercised by post, and it will also be possible to

exercise of this right by email and identification of the holder by affixing a qualified electronic signature.

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6. The Project also intends to clarify that the duty of recording information by insurance companies also covers cases in which death coverage is marketed in conjunction with other insurance contracts and that the duty to maintain this information in the central register remains for as long as the legal period of limitation of benefits due under the insurance contract or the capitalization operation. It also carries out some updates on the protection of personal data.

7. Among the amendments introduced to Regulatory Standard No. 14/2010-R, of October 14, amended by Regulatory Standards No. 9/2011-R, of September 15, 3/2012-R, of 8 of March, 9/2012-R, of December 14th, and 7/2013-R, of October 24th, from the point of view of data protection, those made to article 10 and 11 stand out and the Forms contained in Annexes I and II.

8. Thus, article 10 updates the legal references due to the entry into force of the RGPD, as well as the designation of the person responsible (ASF) for data processing arising from the application of the draft regulatory standard. It enshrines the possibility of the holders' right of access to their personal data contained in the central register also being carried out by email, by filling in the form contained in Annex I, in compliance with the requirements listed in paragraphs a) to d) of paragraph 2 of the same article.

9. Precisely subparagraph d), refers as a requirement for access to the «Presentation of a copy of a document containing the full name and civil and tax identification numbers of the holder, if this data has not been provided under the terms of the previous subparagraphs» .

10. The same requirement is provided for in subparagraph b) of paragraph 1 of article 11, for access by any interested party to

the data contained in the central register, to verify his status as beneficiary of a life insurance contract, accident of a capitalization operation in which a specific person is insured, subscriber or holder, after the death or presumed death of the insured, subscriber or holder.

11. The CNPD expresses its reservations regarding the use of a copy of a document containing identification elements for the purposes of proof of identity, since the scanning of a 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, which is why it is recommended to reconsider this requirement contained in paragraph d) of paragraph 2 of article 10. ° and paragraph b) of paragraph 1 of article 11 of the Project.

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12. Regarding the possibility of the holders' right of access to their personal data contained in the central register being carried out via email, it should be noted that this does not guarantee that the response is sent to an account associated with the applicant's identity. In fact, if the email account is not for exclusive use, the data contained in the reply will be available for all accesses to that inbox.

13. It should also be noted that, in relation to this communication by email, all good information security practices, contained in Guideline No. 1/2023 of the CNPD¹, must be observed. These include the following: preventing errors in manually entering email addresses; ensure that the attached files contain only the personal data intended to be communicated; equate the creation of rules with the aim of postponing/delaying the delivery of email messages containing personal data, keeping them in the 'Outbox' for a certain time, allowing compliance checks, after clicking on 'Send'; encrypt with a code, to which only the recipient has access, the email messages and/or attachments sent that contain personal data and confirm with the recipient, before sending a message containing personal data, the preferred email address for contact.

14. As for the remaining rights of data subjects (erasure, limitation of treatment and rectification) they can be exercised with ASF, through the contacts available on its website at www.asf.com.pt.

15. Annex I of Regulatory Standard No. 14/2010-R, of October 14, in its current wording «Request for access to data contained in the central register of life insurance contracts, personal accident insurance contracts and capitalization

operations" concerns the right of access of the holder to his personal data, provided for in article 15 of the RGPD and regulated in article 10 of the Regulatory Standard under analysis. In turn, Annex II refers to Article 11(1)(a) of the Regulatory Standard (Access to information by interested party). Pursuant to this article, "After the presumed death declaration of the insured, the subscriber or the bearer, any interested party has the right to access the data contained in the central register to verify their status as beneficiary of a life insurance contract, accidents or a capitalization operation in which a specific person is insured, subscribed or bearer, in compliance with the provisions of article 9 of Decree-Law no. 384/2007».

Available at <https://www.cnpd.pt/organizacoes/orientacoes-e-recomendacoes/>

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16. It is considered that the personal data subject to processing are appropriate and necessary for the purpose pursued by the ASF in compliance with the principle of data minimization provided for in paragraph c) of paragraph 1 of article 5 of the RGPD.

17. Still with regard to the processing of personal data, it is important to refer to the information to be provided to the data subjects or their representatives (Annex I) and to the applicant and the interested party (Annex II), embodying the right to information of the data subjects provided for in Articles 13 and 14 of the GDPR.

18. This includes information on the person responsible for processing personal data, grounds for its lawfulness and purposes, data retention period, recipients, lack of automated individual decisions, rights of data subjects, contacts and form of complaint.

19. It is important to refer to the provisions of paragraph f) of Annexes I and II, regarding the rights of data subjects: in addition to the right of access and rectification, the data subject has the right to request the limitation and deletion of data , considering that in relation to the latter «their exercise may suffer justified and proportionate limitations in the balance with the pursuit of the

public interest pursued by the ASF in the specific case». While not questioning the possibility of these rights being limited, it is recalled that such limitations must be provided for in Union or Member State law (cf. Article 23(1) of the RGPD) provided that such limitation respects the essence of fundamental rights and freedoms and constitutes a necessary and proportionate measure, and not, as seems to result from the article, remain at the disposal of the person responsible for the treatment. Such legislative measures should include explicit provisions relating, inter alia, to the categories of personal data, the scope of the limitations imposed, the specific risks to the rights and freedoms of data subjects and the right to be informed about the limitation, in accordance with the Article 23(2) of the GDPR.

III. Conclusion

20. The draft Regulatory Norm does not raise new questions regarding the right to protection of personal data. Under the terms and on the grounds set out above, the CNPD recommends:

- a) reconsideration of the access requirement based on the presentation of a copy of a document containing the full name and civil and tax identification numbers of the data subject, under the terms set out above in point 11 of the article;
- b) the observance of good practices contained in Guideline No. 1/2023 of the CNPD regarding the exercise of the right of access by email; It is

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- c) the reformulation of paragraph f) of Annexes I and II, specifying that the limitation of rights can only occur through a legislative measure under the terms provided for in paragraphs 1 and 2 of article 23 of the RGPD.

Approved at the session of May 16, 2023

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