

I. Order

The Social Security Institute, I.P. (ISS) submitted to the National Data Protection Commission (CNPd) a draft protocol to be signed with the Institute of Registries and Notaries to regulate the communication of civil registry data, relating to birth and death records, to the Social Security.

The CNPD issues an opinion within the scope of its attributions and powers as an independent administrative authority 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 Data Protection Regulation (RGPD), in conjunction with the provisions of paragraph 1 of article 22 and paragraph 1 of article 23, both of Law No. 67/98, of 26 October, amended by Law No. 103/2015, of 24 August (Personal Data Protection Law - LPDP).

The purpose of this protocol is to define the conditions under which personal data are communicated by the Instituto dos Registos e do Notariado (IRN) to the ISS, for the purposes of monitoring compliance with contributory obligations and to guarantee the rigorous attribution of social benefits, as well as to promote effectiveness in preventing and combating tax evasion and fraud (cf. Clause One).

The CNPD asked the ISS for additional clarifications on the practical application of the terms of the protocol, and the necessary information for issuing the opinion¹ was provided.

The protocol provides for personal data to be sent by the IRN to the ISS, in real time, as soon as they are registered in the Integrated Civil Registration and Identification System (SIRIC), through the invocation of web services, in a dedicated circuit and through the Platform of Public Administration Interoperability (iAP).

¹ The Support Document for the Communication of Deaths, version 1.2, January 2019, was sent to the CNPD, as well as a response to specific questions posed by email through the data protection officer.

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With regard to the registration of death certificates, the IRN provides the ISS with the following data: name, date of birth, sex, place of birth, affiliation, residence, NIC2, date of death, death certificate number, code of the respective registry office, date of registration and the identifier of the type of registration, namely, entry, rectification or cancellation annotation.

Social Security validates the information received, communication by communication, and returns a success message; if the information is not accepted, an exception is returned. In processing the information received, Social Security also performs a set of pre-defined procedures within the scope of data quality and, if there is information that does not coincide between the data processed by it and those received from the IRN (eg different date of death), the latter override existing information. In this way, the information received updates the data of the Social Security Information System (SISS).

Regarding birth registration, the name and NIC of the newborn and the name and NIC of the parents are communicated, when available.

This information is registered by Social Security, but is not immediately related to other information already existing in its system, waiting for the subsequent receipt of the information from the child's Citizen Card. At that time, a new natural person will be registered and the corresponding NISS3 will be assigned. Thus, it will be possible to relate the information based on the birth records, which contains the NIC of the child and parents, with the information of the respective NISS held by Social Security, allowing the association of family members.

This is a provisional procedure until the implementation of the Simplex Measure - Official Attribution of the Family Allowance, which will allow in the future to grant the allowance immediately after receiving the data relating to the birth certificate.

Also part of this protocol are the Institute of Financial Management and Justice Equipment, I.P. (IGFEJ) and Instituto de Informática, I.P. (II, I.P), both with responsibilities in terms of the management and operation of technological infrastructures and information systems, respectively from the Ministry of Justice⁴ and the Ministry of Labour, Solidarity and

2 NIC - Civil Identification Number (identity card or citizen's card number)

3 NISS - Social Security Identification Number

4 Cf. no. 2 of article 3 of Decree-Law no. 164/2012, of 31 July.

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Social Security⁵, which, within the scope of this data processing, act as subcontractors (cf. Clause Three of the protocol).

Finally, the Agency for Administrative Modernization, I.P. (AMA), as the managing body of iAP⁶, to facilitate the interoperation of the different information systems, it also acts as a subcontractor.

According to paragraph 2 of Clause Two of the protocol, AMA, in the context of the identity federation service available on iAP, associates the data sent to Social Security with the encrypted NISS (if any), based on the NIC contained in the citizen card of the deceased person that the IRN communicates. This data will be decoded by Social Security, the only entity that can do so.

Pursuant to paragraph 5 of Clause Eight, the II,I.P. records all communications made within the scope of this protocol (audit yogs).

The grantors must also respect the purpose of this data processing, not being able to use the information for other purposes or transmit it to third parties (cf. subparagraph a) of Clause Eleven).

II. appreciation

The protocol under consideration here aims to regulate the terms in which the IRN communicates to the ISS personal data contained in the death records and birth records. The communication of personal data constitutes a processing of personal data, within the meaning of article 4, point 2) of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April - General Regulation on Data Protection (GDPR).

In the State Budget for 2019, approved by Law No. 71/2018, of 31 December, article 155 provides for access by Social Security to relevant civil registry data for the purpose of monitoring compliance with contributory obligations and to guarantee the rigorous attribution of social benefits, as well as to promote effectiveness in preventing and combating fraud and tax evasion. This article also provides that this

⁵ Cf. no. 2 of article 3 of Decree-Law no. 196/2012, of 23 August.

⁶ Cf. No. 7 of Council of Ministers Resolution No. 42/2015, of 19 July.

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data processing is preferably carried out electronically, under the terms of the protocol to be carried out between the IRN and the social security services, the list of data to be transmitted being defined in paragraph 2 of the article.

Therefore, this data processing has as a condition of lawfulness compliance with a legal obligation, provided for in subparagraph c) of paragraph 1 of article 6 of the GDPR, and compliance with paragraph 3 of the GDPR is also partially verified. Article 6 of the GDPR.

As for the content of the protocol, it is considered that there should be a strict application of the terminology of the data protection regime regarding the actual data processing operations that are in question here.

Thus, it is understood that in Clause One, the expression exchange of information should be replaced by “communication of personal data from the IRN to Social Security”; in paragraph 2 of Clause Two, the term interconnection must be replaced by “communication” or “transmission” of personal data, or even the phrase must be reformulated, as it is only AMA that performs data interconnection.

With regard to Clause Eight, under the heading «Conditions for access to information», the CNPD considers that the process of communication/provision of personal data should be better described, explaining that it is carried out in real time “from the registration of the death and birth records in SIRIC”; otherwise, the reference parameter is missing. Eventually, in line with the terminological rigor mentioned above, the title and paragraph 1 should be reformulated, in order to better reflect the data processing operation carried out. Although in practice there is access by the ISS to information under the responsibility of the IRN, the initiative comes from the IRN, which is the one to communicate the data and not to be passively consulted by the Social Security.

As for the existence of auditing yogs, it is considered that their registration should be foreseen for both who receives the data and who sends them, and a paragraph 6 should be added to Clause Eight that mirrors an obligation identical to that of paragraph 5 for the availability of data by the justice systems.

It is also suggested that the content of subparagraph a) of Clause Eleven be made autonomous, as it is particularly important in the context of this protocol, and not presented as one of the obligations resulting from the application of the GDPR, as these are

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many more and some of which are already reflected in the rest of the clauses. As for subparagraph b) of this Clause, it seems more appropriate that it be transposed to the clause relating to security.

Finally, the identification of the parties' interlocutors and their respective contacts for the purpose of monitoring the execution of the protocol is considered positive, as well as the obligation to carry out all communications in writing.

III. Conclusion

With the introduction of the changes identified above, the CNPD considers that there are no impediments to the signing of the protocol for the communication of civil registration data, by the IRN, to Social Security.

Lisbon, May 28, 2019

Filipa Calvão (President)

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