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// NATIONAL DATA PROTECTION COMMISSION

OPINION/2020/95

## I. Order

The Social Security Institute, I.P. (ISS), asked the National Data Protection Commission (CNPd) to comment on the Draft Protocol to be signed with the Instituto do Emprego e Formação Profissional, I.P. (IEFP) and the Instituto de Informática, I.P., which regulates the terms under which data interconnection takes place in the approved legal framework for the extraordinary incentive to normalize business activity, support for the progressive recovery and the extraordinary training plan, the partial expense of 50% of the payment and the total exemption from payment of social security contributions payable by the employer, within the scope established by Decree-Law No. 10-G/2020, of 26 March, and No. 27-B/2020, of 19 June.

The request made and the present opinion fall within the attributions and powers of the CNPD, as the national authority for the control of the processing of personal data, in accordance with the provisions of subparagraph c) of paragraph 1 of article 57 and n. 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. , in Article 4(2) and Article 6(1)(a), all of Law No. 58/2019, of August 8 (which aims to ensure the execution , in the domestic legal order, of the GDPR).

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

## II. appreciation

The Draft Protocol under analysis, in Clause Six, clearly defines those responsible for the processing of personal data provided for therein (the “data interconnection”), the ISS and the IEFP, specifying, in Clause Seven, that the Instituto de Informática, I.P., acts as a subcontractor of the ISS (cf. points 7) and 8) of article 4 of the GDPR). The possibility of subcontracting by the IEFP is also established (cf. Clause Seven of the Protocol) It is important, in this regard, to emphasize that the determination in subparagraph a) of Clause Eight that further subcontracting by the subcontractors depends on the authorization of the

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respective person in charge is not consistent with the provision in Clause Nine that the choice of subsequent subcontractors is considered delegated to the subcontractor, without prejudice to the right of opposition of those responsible. As both solutions fall within the scope of Article 28(2) of the GDPR, it is important to make a choice: either that the use of subcontracting is made dependent on the authorization of the controller or that this possibility is foreseen with the exception of the opposition from the controller. It is therefore recommended to review the provisions of subparagraph a) of Clause Eight and subparagraph b) of Clause Nine, in order to correct the indicated inconsistency.

Regarding the security measures, described in Clause Five and Clause Eleven, it is only important to emphasize that the exchange of information between the Instituto de Informática, I.P., and the IEFP is done by file, through FTP protocol. The CNPD considers that the FTPS protocol (File Transfer Protocol over SSL) should be used, as it adds an extra layer of security resulting from the SSL cryptographic protocol.

### III. Conclusion

On the grounds above, the CNPD is limited to recommending:

- a) review of clauses Eight and Nine, so that it is clearly defined whether the possibility of further subcontracting is dependent on authorization from the controller or only on his non-opposition;
- b) the use of the FTPS protocol.

Lisbon, August 6, 2020

Filipa Calvão (President, who reported)