

NATIONAL DATA PROTECTION COMMISSION

OPINION/2020/25

I. Order

The Insurance and Pension Funds Supervisory Authority (ASF) asked the National Data Protection Commission (CNPD) to issue an opinion on the Draft "regulatory rule that aims to regulate the initial provision of information by mutual associations covered by the transitional regime supervisory authority to the ASF for the purposes of exercising the powers legally entrusted to it".

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)(a), all from Law No. 58/2019, of 8 August.

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

II. appreciation

The Project in question regulates the scope, nature and format of the information to be provided by mutual associations covered by the transitional supervisory regime to ASF, under the terms defined in Articles 6(6) of Decree-Law no. 59/2018, of 2 August, which approves the Code of Mutual Associations. The provision of information aims to ensure the exercise of ASF's supervisory powers over such entities, which are provided for in paragraph 5 of article 6 of the same legal instrument.

The essential information to be reported to ASF does not relate to identified or identifiable natural persons, so its communication to ASF does not correspond to a personal data processing operation (cf. paragraphs 1) and 2) of article 4 of the GDPR).

And in cases where the communication of personal data is foreseen, they are not particularly sensitive, and the treatment is based on lawfulness in subparagraph c), as well as in subparagraph f), of paragraph 1 of article 6. of the GDPR.

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In fact, Article 13, in subparagraphs b) to e), provides for the reporting of the identification of the holders of the management, administration, supervision and supervision bodies of the mutual association, of those responsible for the organic units and also of those responsible for key functions risk management, compliance verification, internal audit, actuarial or others identified in the legal framework for accessing and exercising the insurance and reinsurance activity<sup>1</sup>. The other information regarding the process of selection and assessment of attributes of these categories of persons is of a generic nature and is therefore not individualized information (cf. paragraphs f) and g) of article 13).

The identification data are appropriate and necessary for the exercise of ASF's supervisory functions, and in particular the powers conferred by subparagraph f) of paragraph 5 of article 6 of Decree-Law No. 59/2018, so that respect the data minimization principle enshrined in Article 5(1)(c) of the GDPR.

In relation to the other personal data communicated to ASF, they relate to the person responsible for providing the information, being delimited by the name, department of the mutual association where it performs functions and electronic address, which also complies with the aforementioned principle.

More detailed personal information is only collected for intermediaries, with the tax identification number, associated contributions and respective remuneration being communicated (cf. article 11 of the Project and annex III). These data prove to be adequate and necessary for the exercise of the power conferred on ASF by subparagraph g) of paragraph 5 of article 6 of Decree-Law no. of article 5 of the GDPR.

Finally, Article 23 of the Project, with regard to the analysis of information to be carried out by the actuary, provides for access by the actuary to relevant and necessary information, as well as a period of not less than five years for the conservation of the information that has served to support its conclusions for the purpose of submitting it to the ASF (see paragraphs 3 and 4).

Bearing in mind that the information considered relevant and necessary may include information regarding dates of birth and gender, which makes the natural persons to whom such data relate to be identifiable, the processing of personal data may be at issue here. Insofar as the processing of data is based on article 77 of the Regime

<sup>1</sup> Approved by Law No. 147/2015, of 9 September, last amended by Law No. 7/2019, of 16 January.

access and exercise of insurance and reinsurance activity, in particular in paragraph 4, it seems to respect the rules of protection of personal data.

### III. Conclusion

On the above grounds, it is the CNPD's understanding that the Project under analysis does not raise reservations or observations as to its compliance with the legal data protection regime.

Approved at the plenary meeting of March 10, 2020

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