

Request

1. Caixa Geral de Aposentações, I.P., (CGA) submitted to the National Data Protection Commission (CNPd), for an opinion, the Protocol to be signed with the Social Services of Caixa Geral de Depósitos (SSC6D), governing the terms of sharing of information relating to retired members with a view to compliance by the SSCGD with their legal and statutory obligations.
2. The CNPD issues an opinion within the scope of its attributions and competences 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, in conjunction with subparagraph b) of paragraph 3 of article 58 and paragraph 4 of article 36, all of Regulation (EU) 2016/679, of 27 April 2016 - General Regulation on Data Protection (hereinafter GDPR), in conjunction with the provisions of article 3, paragraph 2 of article 4, and paragraph a) of paragraph 1 of article 6, all of Law No. 58/2019, of August 8, which implements the GDPR in the domestic legal order.
3. The protocol proposal aims to regulate the terms and conditions under which the CGA shares, with the SSCGDs, information regarding the members of the retired SSCGDs, in order to fulfill their legal and statutory obligations.
4. According to the draft protocol sent, two forms of data sharing are foreseen: the monthly transmission, by the CGA to the SSCGD, of a computer file in CSV/XLS format and the access by the SSCGD, to the user file of the CGA, through the CGA Direta portal.
5. The data transmitted under the present Protocol are kept for a period of one year and the SSCGD must provide for its subsequent destruction.
6. Technical and organizational measures are foreseen to ensure a level of security in accordance with Article 32 of the GDPR.
7. The CNPD's request came to the CGA later to attach an Impact Assessment on Data Protection (AIPO) carried out by this entity and the SSCGD.

II. Analysis

8. The SSCGD is an institution with legal personality and administrative and financial autonomy that carry out its activity in the fields of social support, culture, sport, commercial and health, with the objective of

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main contribution to the socio-economic, personal and family improvement of Caixa Geral de Depósitos (CGD)¹ employees.

9. CGD employees are members of the SSCGD, in situations where their functions are effective, as well as retirees and retirees, as well as directors in office. A member is registered automatically on the date of admission to CGD, maintaining the status of member even in a situation of pre-retirement or retirement/retirement.

10. SSCGD members deduct their membership fees based on the value of the pension.

11. The SSCGD's legal and statutory obligations are, among others, to share the costs and expenses incurred by their members and beneficiaries in the field of medical, drug and hospital assistance, and the members must pay the part not reimbursed even if such costs have been initially and fully paid by the SSCGD.

12. The preamble to the Protocol states that, in order to carry out their mission, as far as retired members are concerned, the SSCGD need access to information held by the CGA, as the entity that processes pensions.

13. In the A1PD it is mentioned that the treatment in question is necessary for the fulfillment of legal and statutory obligations of the SSCGD. When the applicant was questioned about the legislation on which it is based to justify that the treatment in question is necessary to comply with legal obligations, it came to inform that "The intended processing of personal data is based on article 20.0 of the Statutes of the SSCGD, which provides for the feasibility of the registration of family members of partners as beneficiaries, namely the spouse or person who lives with a partner in a de facto union.» and explained that «Only access to the updated marital status of the partners will allow the determination of the feasibility of the inscriptions and respective maintenance».

14. Thus, and in the absence of a law that expressly determines the forms of expediting the evidence and verification of the fulfillment of the conditions for the registration of the family members of the partners as beneficiaries, the basis of legitimacy for this processing of personal data will have to be brought back to the consent of the data subject - cf. Article 6(a) of the GDPR. Obtaining the data subject's consent must comply with the provisions of Article 4(11) and Article 7 of the GDPR.

1 CGD's Social Services appear in 1965 in the Government Gazette Decree-Law No. 46 305, with its regulations published on 8 August 1968, by order of the then Minister of Finance.

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15. Pursuant to clause three, the CGA transmits a computer file monthly to the SSCGDs containing the following information relating to its retired members: user number, name, beneficiary number, marital status, pension amount, discount amount, reference date , comments.

16. The data being processed are adequate and limited to what is necessary for the purpose in question in compliance with the principle of necessity and data minimization provided for in subparagraph c) of paragraph 1 of article 5 of the RGPO.

17. The draft protocol provides, without specifying, that the transmission will be carried out by electronic means. It also establishes that the transmission will include the use of an advanced encryption standard (AES), equivalent or higher, granting protection to information in transit between the two entities (paragraph 3 of clause eight).

18. Thus, given the lack of definition regarding the electronic means of transmission to be used, it is necessary to clarify, in the protocol, which electronic means through which the transmission will take place and how the CSVVXLS file will be generated, to be transmitted in the aforementioned manner.

19. The CNPD also recommends the implementation of manual or automated control mechanisms that ensure that the set of personal data contained in the file to be transmitted corresponds to the protocol, as well as the implementation of control mechanisms that guarantee that the information compiled in the file to be transmitted transmit, concerns only the target group of holders (retired CGA users, simultaneously SSCGD members) and the adoption of measures aimed at prohibiting the

reproduction, portability and retransmission to third parties of the information shared between the parties.

20. In turn, clause five provides for access to the user file, via the CGA Direta portal, by the SSCGD, with access being limited to consultation operations and with the obligation to communicate to the CGA the identification of the SSCGD employees who access the user file, keeping this information up to date. Naturally, the aim is to limit the possibility of undue access by users who no longer have the legitimacy to perform access.

21. The CGA user file contains the following elements: full name; birth date; Identity Card/Citizen Card; nationality; affiliation; N1F; relationship with the CGA; subscriber number of CGA; date of enrollment in the CGA; category and service.

22. It should be noted that the protocol is silent as to the way in which the aforementioned access will be granted and as to the mechanisms for controlling access and recording user records viewing events, so it is suggested to introduce an item that expressly consecrate.

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23. The CNPD recommends the creation of nominal, personal and non-transferable access accounts to the CGA DIRETA portal to be assigned to the interlocutors appointed by the SSCGD and the strengthening of the policy for managing access privileges to the door! Direct CGA, ensuring that the SSCGD only access the user files of the target group of holders (retired CGA users, simultaneously SSCGD members). It is also suggested the implementation of a logging system, sharpening the careful choice of the appropriate events to be recorded (accesses and others) to a robust log retention period, thus increasing

the ability to prevent and mitigate incidents that result in violations of personal data.

24. Regarding the «exercise of rights by data subjects», clause nine provides that «in the face of any requests made by data subjects, for the purpose of exercising their rights, namely the right of access, rectification, elimination, limitation of treatment, portability of data and opposition to processing, the Parties agree to communicate with each other expeditiously, namely by email, using for this purpose the contact details of the interlocutors designated in clause four».

25. Contrary to what seems to result from its title, this clause is only intended to regulate compliance with the obligation provided for in Article 19 of the GDPR, which clearly applies in this context in which there is transmission of personal data. It should be noted that data subjects are not recipients of this protocol, so the regulation of the exercise of their rights would be unnecessary here. It is therefore recommended to reformulate this clause, changing its title to reflect its content and also to change the body of the section focusing only on the rectification and elimination of personal data and limitation of the treatment to which it has been carried out at the request of the data subjects.

26. With regard to the security measures listed, without prejudice to the need for additional clarifications on omitted points identified above, they seem appropriate. It is underlined, in
however, the need for permanent verification of its compliance.

III. Conclusion

27. Thus, on the grounds set out above, the CNPD recommends:

a) The reformulation of paragraph 2 of clause four of the Protocol in order to clarify the electronic means through from which the transmission will take place and how the CSV/XLS file will be generated, to be transmitted in the aforementioned manner;

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b) The introduction of an item that expressly sets out the way in which the access provided for in clause five and the mechanisms for controlling access and recording events for viewing
user cards; and

c) The alteration of its heading of the ninth clause in order to reflect its content and also the reformulation of its content in order to focus only on the rectification and elimination of personal data and limitation of the treatment that has been carried out at the request of the data subjects.

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