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## NATIONAL DATA PROTECTION COMMISSION

OPINION No. 13/2018

### I. Order

The Office of the Assistant Secretary of State and Finance referred the National Data Protection Commission (CNPd), for pronouncement under Articles 3 and 4 of Decree-Law No. 274/2009, of 2 October, the draft Authorized Decree-Law that transposes Directive (EU) 2016/97, of the European Parliament and of the Council, of 20 January 2016, on the distribution of insurance into the domestic legal system.

The request made stems from the powers conferred on the CNPD by paragraph 2 of article 22 of Law no. 67/98, of 26 October, amended by Law no. Protection of Personal Data (hereinafter, LPDP) -, and the opinion is issued using the competence set out in paragraph a) of paragraph 1 of article 23 of the same legal diploma, being restricted to aspects related to data protection personal.

### II. appreciation

The draft Authorized Decree-Law under examination transposes Directive (EU) 2016/97, of the European Parliament and of the Council, of 20 January 2016, on the distribution of insurance into the domestic legal order, and approves the legal regime distribution of insurance and reinsurance, included in the annex, of which it forms an integral part. It also makes the third amendment to the Legal Regime for Accessing and Exercising the Insurance and Reinsurance Activity, approved by Law No. 147/2015, of 9 September, in its current wording and the first amendment to the Procedural Regime applicable to Special Crimes in the Sector Insurance and Pension Funds and Administrative Offenses whose processing is the responsibility of the Insurance and Pension Funds Supervisory Authority (ASF), approved by Law No. 147/2015, of 9 September, in its current wording.

From the reading of the draft Decree-Law, it appears that among the changes introduced to the two aforementioned legal diplomas, there is no specific rule aimed at their suitability to the general regime for the protection of personal data.

With regard to the legal regime for the distribution of insurance and reinsurance, contained in the annex, it should be noted that it enshrines various processing of personal data under the terms defined by article 3, paragraphs a) and b), of the LPDP,

without which they are regulated.

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the aspects required to safeguard this fundamental right (and which are indicated in article 30 of the LPDP).

It should be noted that Article 10 of the draft, under the heading personal data, states that the Insurance and Pension Funds Supervisory Authority (ASF) «... is authorized to process personal data, including data collected in the process of assessing suitability and collected data related to infringements, when such processing is essential for the exercise of the legal attributions entrusted to it and for the protection of the interests of policyholders, policyholders, participants and beneficiaries. 2 — The processing and transfer of personal data resulting from the regime provided for in this iei and respective regulations is processed in accordance with the legal regime for the protection of personal data».

Bearing in mind that Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, on the protection of individuals with regard to the processing of personal data and the free movement of such data (Regulation General on Data Protection - RGPD), has been in force since May 25, 2016 and will apply from May 25, 2018, express reference to this legal diploma is recommended.

Without prejudice to this general recommendation, it is important to analyze some data processing provided for in the Legal Regime for the distribution of insurance and reinsurance, contained in the annex, which is an integral part of the draft Decree-Law. In assessing the legal provisions in question, reference will be made not only to the legal data protection regime currently applicable but also to that contained in the GDPR and which is already in force.

1 - Thus, the processing of personal data provided for in articles 17 (Process of registration in the registry in the category of insurance agent), 19. (Process of registration in the registry in the category of insurance broker), 21 ( Process of registration in the registry of insurance intermediaries on an ancillary basis) and 22nd (registration of reinsurance intermediaries), of the

Legal Regime for the Distribution of Insurance and Reinsurance, concerning the registration of insurance professionals in the register through the Authority's website Supervision of Insurance and Pension Funds (AFS) on the Internet, do not specify the categories of personal data covered, referring

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for later regulation by that Authority, the definition of the list of documents that must inform the registration process for the purposes of proving the conditions of access.

In the same vein, under the terms of article 57 of the Legal Regime for the Distribution of Insurance and Reinsurance, the ASF is the authority responsible for creating, maintaining and permanently updating the electronic register of insurance, reinsurance and ancillary insurance intermediaries. resident or whose registered office is located in Portugal, and the ASF must define, by regulatory rule, the form of organization of the register and the elements referring to each reinsurance and ancillary insurance intermediary that must be included in the register. It should be noted that the draft, in addition to not specifying the categories of personal data to be processed (Articles 5 and 30 of the LPDP and Article 5(1)(c) of the GDPR), also does not regulates the exercise of data subjects' rights, namely the exercise of the right of access and rectification (cf article 11 of the LPDP and article 15 of the RGPD).

2 - In article 58 (Articulation with the single electronic register of EIOPA), it is foreseen that the ASF will provide the European Insurance and Supplementary Pensions Authority (EIOPA) with all relevant information for the single electronic register implemented by this European authority, which contains the register of insurance, reinsurance and ancillary insurance intermediaries who have notified their intention to carry out cross-border activity in accordance with Chapter VI of the diploma. Once again, the content of the information to be transmitted to EIOPA is not specified, and the categories of personal data to be processed are not determined pursuant to Article 30(1)(b) of the LDPD.

3 - On the other hand, article 72 (Report of an infringement to the ASF) establishes that the ASF must guarantee the existence of specific procedures for the reception and analysis of participations, as well as the protection of the personal data of the whistleblower and the suspect of the practice of the offence.

We are dealing with data processing involving data related to suspected illegal activities, criminal offenses and administrative offences, which is framed in article 8, no. data protection and specific information security measures.

4-0 The draft also provides for a set of data communications within the scope of ASF's cooperation with other competent authorities under the terms of article 74, when the application of one of the sanctions provided for in Chapter VII is at stake or the adoption of a measure pursuant to Articles 83 or 87, as well as the regular sharing of information regarding the suitability and appropriate qualifications of insurance or reinsurance distributors, in particular for the purposes of registration and also the communication to similar authorities of the subjection of a distributor insurance or reinsurance to a sanction or equivalent measure liable to lead to the cancellation of registration. Also here, in this processing of personal data, it is important to ensure compliance with data protection standards and security measures in the processing of data listed as mentioned in point 4.

5 - As a final note, article 75 (Exchange of information), in its paragraph 5, establishes that the exchange of information necessary for the exercise of supervision of the insurance or reinsurance distribution activity with competent authorities of non-EU countries members of the European Union, or with the authorities or bodies of these countries, is subject to the guarantees of professional secrecy. In this regard, the need to comply with the rules laid down in Articles 19 and 20 of the LPDP on international data flows to third countries and in Chapter V of the GDPR is underlined.

### III. Conclusion

The draft Decree-Law provides for various processing of personal data without their essential aspects being specifically regulated, so it is recommended to reformulate paragraph 2 of article 10 of the draft in order to expressly refer all processing of personal data for the legal regime for the protection of personal data.

Due to the special impact that they may have on the rights of the holders of personal data, it is also recommended to densify Articles 17, 19, 21, 22, 57 and 58 of the Legal Framework for Distribution insurance and reinsurance, in order to specify the elements

of the processing of personal data provided for therein, with special focus on the categories of personal data being processed.

Lisbon, April 3, 2018

Filipa Calvão (President)

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