

NATIONAL DATA PROTECTION COMMISSION

OPINION/2020/134

1. Order

The Instituto da Segurança Social I.P, (ISS) submitted to the National Data Protection Commission (hereinafter CNPD), for an opinion, the Protocol to be signed with the General Inspectorate of Finance - Audit Authority (IGF), governing the terms in which IGF will have access to the information elements that make up the ISS, IP databases relating to the Social Security Information System and its Subsystems for the exclusive purpose of carrying out the powers legally assigned to it.

The CNPD issues an opinion within the scope of its powers and competences as an independent administrative authority with authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57, in conjunction with subparagraph 6/ of paragraph 3 of article 58, and with 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 8 August, which enforces the GDPR (hereinafter LE) in the domestic legal system.

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Decree-Law No. 276/2007, of July 31, in its current wording, which approved the legal regime for inspection activity in the direct and indirect administration of the State, which includes the activity of the IGF, determines that the public legal persons must provide the inspection services with all the collaboration requested by them for the performance of their mission, and also that access to information relevant to the exercise of their respective attributions, the categories of holders and the data to be analysed, the form of communication and the respective treatment must be defined by means of a protocol to be concluded between the respective entities, subject to authorization by the CNPD (article 5, paragraphs 1 and 4). It should be noted that, with the entry into force of the RGPD, the powers of the CNPD no longer include the prior authorization of processing of personal data in the terms described (provided for in subparagraph b) of paragraph 1 of article 23 of Law no. 67/98, of 26 October, revoked by Law No. 58/2019, of 8 August) for which reason this indictment derives from the advisory powers provided for in subparagraph b) of paragraph 3 of article 58 of the GDPR

In order to carry out its mission, IGF needs access to information residing in the databases or information systems used by the ISS, I.P., within the strict scope of its competences as a national audit authority and European funds, of strategic financial control and specialized, financial supervisory authority and supervisory entity of SGPS.

Thus, it is considered that the basis of legitimacy for these data processing lies in subparagraph e) of paragraph 1 of article 6 of the GDPR, insofar as it is necessary for the exercise of public authority vested in the IGF - cf. Article 2 of Decree-Law No. 96/2012, of 23 April, and No. 3 (2nd part) of Article 6 of the GDPR.

Pursuant to clause 2.a, for the purposes of monitoring and implementing the Protocol, each of the parties appoints a representative who will act as interlocutor for this purpose. The IGF representative sends a communication to the ISS, I.P. email, defined in the Protocol, requesting access to certain information and indicating who may have access to that information in view of their specific competences and according to the functions performed and the objectives. in cause. As mentioned in clause 1.a, this specific communication will indicate the category of data subjects, the types of data, the respective treatments to which they are subject and the respective legal framework! the exercise of public interest functions or the exercise of public authority in which the IGF is invested, as well as the constitution of the audit team and the expected start and end dates of the action.

It should be noted that, given the generic nature of the information being processed, the CNPD's pronouncement will focus only on the procedural aspects of access.

It is important, first of all, to mention that the Protocol, due to its general nature, does not dispense with a case-by-case assessment of the conditions of access to the databases, for the purpose of verifying compliance with the principle of necessity and the principle of data minimization, enshrined in Article 5(1)(c) of the GDPR. To that extent, in addition to the elements listed in clause 1.a, the Protocol must also provide for the obligation of contextualization for each access, namely the indication of the number of the IGF process within which the data are required.

Regarding the IGF's access to the information elements that make up the ISS, I.P. databases, relating to the Social Security Information System and its

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Subsystems, clause 4.a stipulates that the ISS may provide this information previously requested, or the IGF have access to information, remotely, through a secure communication channel, using a fogin and password, created specifically for the effect and with a temporary character. The IGF's access to information under the responsibility of the ISS can also be made directly on the physical processes that are the subject of consultation during the action carried out. Access to information on the ISS is carried out through the creation of users with a temporary consultation profile, without the possibility of editing or altering data, and strictly necessary to carry out the action, in compliance with the rules defined in the Access Management Policy of this Institute.

With regard to the modalities of access that are carried out digitally, the CNPD recalls the mandatory implementation of IPsec tunnels, to guarantee data confidentiality. It should also be noted that the access routes designated for consultation of information must offer guarantees of auditability that allow, in particular, to assess who was the person who carried out a certain search, as well as the reason (e.g., reference to the number of the process that motivated the Query).

On the other hand, paragraph 6 of this clause states that those responsible for monitoring this Protocol are responsible for keeping an updated record of the accesses granted, with information on the categories of data subjects, the types of data, the treatments to which they were subjects and the respective legal framework for the exercise of public interest functions or the exercise of public authority vested in the IGF. However, under the terms of clause 2.a, for the purposes of monitoring and implementing the Protocol, each of the parties appoints a representative who will act as interlocutor, being responsible for the obligations provided for in article 30 of the GDPR.

Finally, paragraph 7 of the Clause determines that the IGF proceeds to delete the information made available and/or accessed after the expiry of the archival conservation periods in force, in compliance with the principle of limitation of conservation provided for in paragraph f) of article 5. ° GDPR, what if. considers positive.

III. Conclusion

Thus, based on the above grounds, the CNPD recommends:

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1. The introduction in the Protocol of the obligation to contextualize each access, namely imposing the indication of the number

of the IGF process within the scope of which the treatment is carried out;

2. Clarification of clause 4a of the Protocol regarding the scope of access in the terms described, as well as the consecration of the implementation of IPsec tunnels to guarantee data confidentiality, with the access routes offering guarantees of auditability.

Lisbon, November 5, 2020

Maria Cândida Gue'des de Oliveira (Rapporteur)

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