

National Data Protection Commission

OPINION/2021/4

I. Order

1. The Directorate-General for Energy and Geology (DGEG) asked the National Data Protection Commission (CNPD) to comment on the draft protocol on the automated processing of personal data, within the scope of social tariffs for electricity supply and natural gas and audiovisual contribution.
2. The CNPD issues an opinion within the scope of its attributions, as the national authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and paragraph 4 of article 36 of the Regulation (EU) 2016/679 of the Parliament and of the Council of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of article 3, paragraph 2 of article 4 .° and in paragraph a) of paragraph 1 of article 6, all of Law n.° 58/2019, of 8 August.
3. This draft protocol (hereinafter «Protocol») aims to revoke the protocol in force, signed between the same parties on June 2, 2016, and which was the subject of pronouncement by the CNPD in Deliberation No. 922/2016. DGEG and the Instituto da Segurança Social, I.P. are parties to the Protocol, on the one hand, as controllers. (ISS), and on the other, as subcontractors, the Agency for Administrative Modernization, I.P. (AMA) and the Instituto de Informática, I.P (II, IP) of social security.
4. The purpose of the Protocol is to establish the conditions under which the DGEG determines and confirms with Social Security the situation of economically vulnerable final customers, with a view to communicating to suppliers which customers benefit from the social tariff, so that this can be applied automatically, as provided for in Law No. 7-A/2016, of 30 March.
5. The need to amend the current protocol stems from a legal amendment that extends the conditions of access to the social tariff for electricity and natural gas, namely extending the eligibility of end customers considered economically vulnerable to all situations of unemployment, as well as the beneficiaries of some social benefits not covered so far.
6. There are no other substantive changes in relation to what was already foreseen in the previous protocol, namely regarding the information circuit, regarding the means of communication, regarding the registration of logs for auditing and their retention period. Only the normative references are revised and supplemented by reference to the new legal framework of the GDPR.

To that extent, the CNPD will not comment again on these aspects, giving the content of Deliberation no.

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II. Analysis

7. This Protocol covers only a part of the interactions that exist between the various actors within the scope of the application of the social tariff for the supply of electricity and natural gas, with the remainder being carried out under the cover of other protocols already subject to analysis by the CNPD, in the aforementioned Deliberation no. 922/2016 and in Deliberation no. 412/2018.

8. Law No. 2/2020, of 31 March, which approved the State Budget for 2020 (LOE), provides in its article 293 in a generic way that "the Government, during the year 2020, to the extension of the conditions of access to the social tariff for electricity and natural gas, namely by including all situations of unemployment within the scope of eligibility».

9. Thus, Decree-Law No. 100/2020, of 26 November, implements this provision of the LOE by extending the social tariff for electricity and natural gas to more situations of social and economic insufficiency. Decree-Law No. 100/2020 makes the third amendment to Decree-Law No. 138-A/2010, of 28 December, and the second amendment to Decree-Law No. 101/2011, of 30 September, extending the social tariff to beneficiaries of unemployment benefits and beneficiaries of the social disability pension of the special disability protection scheme or of the supplementary social benefit for inclusion (cf. Articles 2 and 3).

10. The legislative change that has taken place has an impact on the universe of beneficiaries of social security benefits, so the ISS, as the controller, will have to insert more categories of data subjects, in relation to which specific personal data are processed, under the conditions of eligibility for the application of the social tariff for the supply of electricity and natural gas.

11. Thus, upon supplying the NIF by DGEG, Social Security, within a maximum period of six working days, returns to DGEG, in association with the NIF received, the address it holds associated with the holder's NISS and only the verification code of the

eligibility (Y-verifies the condition/ N-does not verify the condition), for each of the situations under assessment: electricity, natural gas and audiovisual contribution.

12. The change in the eligibility criteria, which implies a different processing of data from that carried out so far, as it has a legal provision in the LOE and more specifically in Decree-Law No. 100/2020, finds legitimacy in article 6. , paragraph 1, point c), of the RGPD, fulfilling, in the opinion of the CNPD, the requirements of the second subparagraph of paragraph 3 of article 6 of the RGPD.

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III. Conclusion

13. Based on the above, the CNPD considers that there is no obstacle to the signing of the Protocol, which largely reproduces the previous protocol and which has already been positively assessed by the CNPD, in its Deliberation No. 922/2016 , which is reproduced here in the relevant parts, and which updates the text only to align the normative references with the new legal framework of the GDPR.

14. The processing of personal data by Social Security for the purpose of determining the end customers considered economically vulnerable is based on a new legal basis that changes the eligibility criteria, expanding the universe of beneficiaries of the automatic application of the social tariff for the supply of electricity and natural gas, considering that there is a legal condition for this treatment, based on Article 6(1)(c) of the GDPR.

Approved at the meeting of January 19, 2021

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