

I. Order

1. The Insurance and Pension Funds Supervisory Authority (ASF) requested, on July 5, 2022, the National Data Protection Commission (CNDP) to comment on the draft amendment to Regulatory Standard No. 6/ 2019-R, of 3 September, in terms of adequate qualification, training and continuous professional development.

2. The request made and the present opinion fall within the attributions and powers of the CNDP, as the national authority to control the processing of personal data, in accordance with the provisions of subparagraph c) of paragraph 1 of article 57 and in 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 .°, in paragraph 2 of article 4 and in paragraph aj of paragraph 1 of article 6, all of Law n.° 58/2019, of 8 August (which aims to ensure the enforcement, in the domestic legal order, of the GDPR).

II. Analysis

3. Law No. 147/2015, of 9 September, established the legal regime for the distribution of insurance and reinsurance, being amended and republished by Law No. 7/2019, of 16 January., establishing, in its article 13, the discipline for the "adequate qualification" of those who carry out the activity of insurance or reinsurance mediation.

4. For this purpose, paragraph 5 of this article 5 establishes that "The ASF implements, by means of a regulatory standard, the procedures for recognition of the insurance courses referred to in paragraph a) of paragraph 1 and in paragraph a) of paragraph 3, the appropriate qualification requirements referred to in the previous numbers, including the program and duration of courses on insurance, the possibility of distance training, as well as the functioning of the commission mentioned in the previous number".

5. The purpose of these paragraphs a) is the "course on insurance appropriate to the activity to be carried out, recognized by the ASF and which respects the minimum contents listed in the annex to this regime and the requirements defined in the ASF

regulatory standard".

6. In turn, Decree-Law no. 1/2015, of 6 January, with amendments to Decree-Law no. 59/2018, of 2 August, approved the statutes of the Supervisory Authority for Insurance and Pension Funds, listing in its article 16 the powers of the board of directors, which include, among others and in accordance with subparagraph a) of paragraph 3, approving regulatory rules, through public consultation.

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7. Within the scope of these competences, Regulatory Norm No. 6/2019-R, of 3 September, was approved, which established the procedures for the discipline of "adequate qualification" mentioned above, such as the written tests for the final evaluation of the insurance training courses, carried out through the face-to-face or distance model.

8. The CNPD issued Opinion/2019/30, of June 6, on the original version of Regulatory Norm No. 6/2019-R, where it recommended, in essence, that "appropriate measures to verify the identity of trainees that minimize the risk of misuse of personal data"¹.

9. Regulatory Standard No. 6/2019-R has been successively amended by Regulatory Standards No. 2/2020-R, of April 18 and No. 3/2022-R, of April 13.

10. The present amendment to Regulatory Norm No. 6/2019-R and object of this opinion is limited, within the scope of the common regime for the recognition of courses on insurance, to the implementation of the distance learning model, so many of the assessment tests final (i), as well as training for cases of force majeure, namely for reasons of public health (ii).

11. For this purpose, we highlight paragraphs 5 and 6 of article 2 of Regulatory Norm n.º 6/2019-R, in the projected version, when it provides for the system of authentication of trainees (item a) of n. 5) and the remote and real-time monitoring by an

identified trainer (paragraph b) of paragraph 5), enumerating in paragraph 6 that that authentication "is carried out through the use of technological means that present a level of security appropriate to the risk, namely on the protection of personal data, and that allow visual contact with the trainees during the test to verify their identity and presence".

12. This projected paragraph 6 of article 5, despite being a regulatory rule, adds little in relation to what is established in the proem of paragraph 1 of article 32 of the GDPR.

13. In turn, paragraph 13 of article 5 of the project requires that "the training entity or the entity responsible for the certified remote platform must guarantee in advance that the computer platform is not liable to constitute a high risk for the protection of personal data", which is not enough to guarantee compliance with the provisions of the GDPR. In fact, this diploma imposes respect for a set of principles and rules in any processing of personal data, not just aiming to prevent the high risk to the rights of the holders. Therefore, this paragraph 13 of article 5 must be revised, in order to

1 Available at <https://www.cnpd.pt/decisoos/historico-de-decisoos/7yeam2019&type=4&ent=>

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impose that the IT platform complies with the principles and rules of protection of personal data, preventing risks to the rights of data subjects.

14. The distance training model is also foreseen for cases of force majeure, namely public health, under the terms of the projected article 10-A, through the requirement that "these sessions will be carried out through the use of technological means that present a level of security appropriate to the risk, in particular on the protection of personal data, and that allow visual or audible contact by trainees, in real time, to verify their identity and presence" (no.).

15. As a supplementary reference, it appears that the provisions of Article 2(12), for the purposes of the procedure for verifying the identity of trainees, remain unchanged, referring to Articles 5 and 6, 1 of the RGPD and article 5, no. 2, of Law no. 7/2007, of February 5th, which created the citizen's card and has been successively amended, the last being by Law no. 61/2021, of August 19th.

16. In short, this draft regulatory amendment is limited to providing for the processing of personal data, without regulating it, not requiring the adoption of adequate security measures to safeguard the risk arising from the use of remote assessment systems

through technological means, or provisions that guarantee compliance with the other principles and conditions for the processing of personal data.

17. In this regard, it is recalled that, in 2020, the CNPD warned of the risks associated with the use of technological solutions to support distance learning and assessment and made recommendations, in the Guidelines for the use of technologies to support teaching at a distance, on April 8, 2020, and in the Guidelines on distance assessment in higher education establishments, of May 22, 2020². And, specifically on remote assessment, the CNPD densified these guidelines in Deliberation/2021/622, of 11 May³, which it made public on its institutional website, noting that the technological solutions available on the market for remote evaluation make, as a rule, their use depend on the expression of consent of the evaluated and evaluators regarding the processing of their data personal - which, *prima facie*, appears to be an impossibility, if conditions of freedom for the manifestation of the same are not created, as follows from paragraph 11) of article 4. ° GDPR -, and a large part involves the international transfer of personal data.

² Available at <https://www.cnpd.pt/organizacoes/orientacoes-e-recomendacoes/educacao/>

³ Available at <https://www.cnpd.pt/decisooes/historico-de-decisooes/7veam2021&tvpe=2&ent=>

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18. All these are aspects on which the amendment project is silent, whether on distance assessment or on distance training.

19. As is apparent from those guidelines and the aforementioned decision, it is important to ensure that the processing of personal data within the scope of the use of the support technology is sufficiently regulated at the regulatory level, both in terms of the legal basis for the collection and subsequent processing operations (not only within the scope of the authentication process, as well as in the analysis of other data during the test or remote session), or regarding the possible international transfer of data, imposing an adequate level of protection in the country of destination.

III. Conclusion

20. Under the terms and on the grounds set out above, the CNPD recommends reviewing the project under consideration to amend Regulatory Norm No. 6/2019-R, of 3 September, within the scope of the common regime for the recognition of courses on insurance in the distance model, in order to regulate and ensure compliance with the legal regime for the protection of personal data, in particular:

The. With regard to the legal basis for the collection and subsequent processing operations, both in terms of the authentication process and other personal data analyzed during the test or remote session;

B. Regarding the possible international transfer of personal data, it is imperative to adopt measures that ensure an adequate level of protection in the country of destination; and

ç. Requiring the adoption of adequate security measures to guard against the risks arising from the use of technologies to support training and remote assessment - specifically recommending the revision of paragraph 13 of article 5 in order to require that the IT platform complies with the principles and rules of personal data protection, preventing risks to the rights of data subjects.

Lisbon, August 10, 2022

Filipa Calvão (President, who reported)