

NATIONAL DATA PROTECTION COMMISSION

OPINION/2019/54

I. Order

The Office of the Secretary of State for Justice asked the National Data Protection Commission (CNPd) to issue an opinion on the draft Ordinance that aims to regulate electronic communications between the enforcement agent, Social Security and Caixa Geral de Pensões within the scope of attachment of social benefits and pensions in the executive proceedings of the judicial courts. It also makes the third amendment to Ordinance No. 331-A/2009, of 30 March.

The request made and the opinion issued now derive from the attributions and powers of the CNPD, as the national authority for controlling the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and 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, no. Article 4(2) and Article 6(1)(a), all of Law No. 58/2019, of 8 August.

The assessment of the CNPD is limited to the rules that provide for or regulate the processing of personal data.

II. appreciation

Decree-Law No. 97/2019, of 26 July, which enters into force on 16 September 2019, amended the electronic procedure for judicial proceedings provided for in the Code of Civil Procedure, and the CNPD issued a statement. on the draft diploma in question through Opinion No. 22/2019, of 15 April.

Pursuant to paragraph 5 of article 132 (Electronic Process) of the aforementioned Decree-Law, communications between courts and public entities may be carried out electronically, by sending structured information and interoperability between the information system of support to the activity of the courts and the information systems of the referred entities, under the terms foreseen in the decree of the members of the Government responsible for the area of justice and for the public entity in question, which is now being analysed.

As follows from the preamble of this draft Ordinance, with the publication of Decree-Law No. 97/2019, of 26 July, the conditions for the implementation of

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various measures of the Simplex+ Program, namely those concerning the simplification and dematerialisation of communications between the courts and public entities.

This is what happens with the measures «Integrated attachments» and «Penhoras+Eficientes in Caixa Geral de Aposentações», implemented through this draft Ordinance, which aim to streamline communications between enforcement agents and Social Security and Caixa Geral de Pensions, within the scope of attachment of social benefits and pensions, allowing a more complete access by the enforcement agent to the information contained in the databases of these entities, as well as the simplification of the attachment process. Such communications include notification of attachment, amendment, consultation, withdrawal of attachment and periodic reporting.

It is noted, however, that article 2 of the draft Ordinance is limited to mentioning that such communications are carried out electronically, by sending structured information and electronic documents between the support system for the activity of the courts, the computer system to support the activity of the enforcement agent and the information systems of Social Security and Caixa Geral de Aposentações. However, this normative provision proves to be manifestly insufficient to guarantee compliance with the principles relating to the processing of personal data, in particular the principle of minimization of personal data, implementation of the principle of proportionality, enshrined in subparagraph c) of paragraph 1 of the Article 5 of the GDPR.

It is therefore important that the draft Ordinance precisely defines the terms in which such processing of personal data can take place, specifying the categories of personal data involved in the transmission of information between the enforcement agent, Social Security and Caixa. General de Aposentações, within the scope of attachment of social benefits and pensions in the executive processes of judicial courts, and specifying the types of documents transmitted electronically. Otherwise, the CNPD cannot assess or conclude on the proportionality of the data to be processed, under the terms of Article 5(1)(c) of the GDPR. The CNPD recommends, therefore, the densification of article 2 of the draft Ordinance in order to contain the aforementioned specifications.

It should be noted that paragraph 4 of article 2 of the project states that the implementation of interoperability between the information system supporting the activity of the courts and the information system of the Social Security will be carried out

under the terms of a protocol to be concluded between the Institute of Financial Management and Justice Equipment, IP, the
Institute of Social Security, IP, the

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Social Security Institute of Madeira, IP-RAM, the Social Security Institute of the Azores, IPRA, Caixa Geral de Aposentações, IP, the Institute of Informatics, IP, and the Order of Solicitors and Enforcement Agents, without, however, mention must be made of prior consultation with the CNPD.

The CNPD recalls that the protocols, insofar as they correspond to legal acts of public entities that define binding rules for the parties regarding the processing of personal data, have the nature of an administrative regulation. To that extent, under the terms of Article 36(4) and Article 57(1)(c) of the GDPR, they must be subject to prior assessment by the CNPD. So that there is no doubt as to this duty, the CNPD suggests its clarification in the text of the article.

In turn, article 3 of the draft Ordinance amends articles 1, 2 and 4 of Ordinance No. 331-A/2009, of 30 March, in order to allow to the enforcement agent to also consult directly the Caixa Geral de Aposentações database to obtain the information referred to therein.

The CNPD has the greatest reservations about the way in which this access to the database is processed, since such direct queries often allow access to more information than necessary for that purpose, in violation of the principle of data minimization. enshrined in point c) and paragraph 1 of article 5 of the GDPR. However, since such access is foreseen, since Ordinance no. and other similar records or files, only now adding to the Caixa Geral de Aposentações database, the pronouncement at this moment about excessive accesses could be considered extemporaneous. However, the CNPD cannot fail to point out the need for such access (direct consultation) to be covered by adequate security measures in compliance with the principle of integrity and confidentiality, provided for in paragraph 1 f) of article 5. of the GDPR. Therefore, it is recommended that article 3 of the draft Ordinance be reformulated, in order to specify the necessary security measures, providing for communication to be carried out over a private network (VPN or similar) and over TLS protocol , setting the individual authentication of execution agents on the platform that gives access to queries to databases of other entities and guaranteeing contextualized access to databases of

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other entities (i.e., providing for measures to ensure that the enforcement agent can only access the information if he/she is dealing with a case/process).

It should be noted that information systems must have mechanisms that allow recording and auditing the activity, so it is suggested to include in this article the duty to record all queries/changes to databases of other entities, as well as the monitoring of records of direct queries. Finally, it is important to ensure that the information accessed is not recorded locally by the systems of the enforcement agents (to avoid the risk of duplication of information and the consequent retention of information for longer periods than expected for the original information).

III. Conclusion

On the above grounds, in order for the Draft Ordinance to comply with the legislative command contained in paragraph 5 of article 132 of Decree-Law No. 97/2019, of July 26, the CNPD recommends:

- 1 - The densification of article 2 of the draft Ordinance, specifying the categories of personal data involved in the transmission of information between the computer system supporting the activity of the enforcement agent and the information systems of Social Security and Caixa Geral de Pensions, as well as the types of documents transmitted electronically;
- 2 - The express consecration of the obligation for the protocol referred to in the same article to be subject to prior appraisal by the CNPD;
- 3 - The reformulation of article 3 of the draft Ordinance, which aims to amend articles 1, 2 and 4 of Ordinance No. 331-A/2009, of 30 March, in order to specify the security measures involved in these personal data processing.

Lisbon, September 17, 2019

Filipa Calvão (President)