

NATIONAL COMMISSION

DATA PROTECTION

OPINION/2019/33

I. Order

The Social Security Institute, I.P. (ISS) submitted to the National Data Protection Commission (CNPd) a draft protocol to be signed with Caixa Geral de Aposentações, I.P. (CGA), within the scope of the payment of the extraordinary supplement for minimum pensions.

The CNPD issues an opinion within the scope of its attributions and powers as an independent administrative entity with powers of authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and paragraph 4 of the article 36 of Regulation (EU) 2016/679, of 27 April 2016 - General Data Protection Regulation (RGPD), in conjunction with the provisions of paragraph 1 of article 22 and paragraph 1 of article 23, both of Law No. 67/98, of 26 October, amended by Law No. 103/2015, of 24 August (Personal Data Protection Law).

The purpose of the protocol under consideration is to define the terms of the collaboration between the granting parties, with a view to the interconnection of personal data from social security and the CGA, by electronic means, for the purpose of paying the extraordinary supplement for minimum disability pensions, old age and survival under the two regimes (Cf. Clause One).

The Instituto de Informática, I.P. is also a party to this protocol, as a subcontractor, taking into account its legal attributions regarding the management and operation of technological infrastructures and information systems of the services and bodies under the Ministry of Labour, Solidarity and Social Security, pursuant to subparagraph c) of paragraph 2 of article 3 of Decree-Law no. 196/2012, of 23 August.

The list of personal data to be transmitted by the CGA to the ISS, and vice versa, is exactly the same and is contained, respectively, in Annexes I and II of the protocol. Regarding identification data: NIF of the pensioner (beneficiary/subscriber or member of the beneficiary/subscriber's household) and date of birth; for pensions covered: data reference date; total amount of pensions; start date of the minimum pension plus

AV. D. CARLOS I. 134 - 1º i 1200-651 LISBON j WWW.CNPd.pt j TEL: +351 213 928 400 | FAX: +351 213 976 832

Process PAR/2019/34 1v.

/

old; current value of the minimum pension; date of cessation of payment in the CGA of the minimum pension complement; reason that gave rise to the cessation of payment; type of pension terminated (own or derived right); date of death of the pensioner (Cf. Clause Two).

The protocol indicates the means of reciprocal communication of the information and determines that the CGA proceeds to record all information queries carried out within the scope of this protocol, as well as the ISS proceeds with the records of access within the scope of this protocol, in accordance with its policy of audit (cf. Clause Eight).

The obligations of subcontractors are also described (Clause Five) and the parties' interlocutors and their contact details for the purpose of monitoring the implementation of the protocol are indicated (Clause Ten).

In Clause Eleven, under the heading "applicable legislation", it is foreseen that the grantors observe the legal provisions regarding the protection of personal data, namely respecting the purpose for which the consultation was authorized, which must be limited to what is strictly necessary. , not using the information for other purposes or transmitting it to third parties.

II. appreciation

The protocol in question aims to regulate the terms in which the ISS and the CGA exchange personal data, mutually transmitting information on minimum pension pensioners for the purpose of paying an extraordinary supplement, provided for in Law No. 71/2018 , of 31 December, which approves the State Budget for 2019. The communication of personal data constitutes a processing of personal data, within the meaning of article 4, paragraph 2), of the RGPD.

a) Lawfulness of treatment

In the LOE, an extraordinary supplement for minimum pensions is created, applicable to pensioners of new minimum pensions, as a way of adapting the values of these pensions to the extraordinary updates that occurred in 2017 and 2018 (cf. paragraph 1 of article 114 of the mentioned diploma). According to paragraphs 2 and 3 of article 114, the supplement applies to

Process PAR/2019/34 2

NATIONAL COMMISSION

■ DATA PROTECTION

pensioners with an overall amount of pensions below a certain threshold, calculated in accordance with the law, and with a

start date between January 2017 and December 2018.

According to paragraph 4 of the same article, the universe of pensioners covered includes beneficiaries of minimum disability, old age and survivors pensions under the general social security system, pensions under the special social security scheme for agricultural activities, pensions under the non-contributory and similar schemes of social security and minimum pensions for retirement, retirement and survival of the convergent social protection scheme granted by the CGA.

In order to make it possible to determine who meets the conditions to receive the extraordinary supplement, the LOE provides, in paragraph 5 of article 114, for the conclusion of a protocol between the CGA and social security that regulates the transmission of information relevant to the application of this article.

Therefore, this processing of personal data has as a condition of lawfulness the fulfillment of a legal obligation, provided for in subparagraph c) of paragraph 1 of article 6 of the GDPR, and compliance with paragraph 3 is also partially verified. of article 6 of the GDPR.

b) Principles applicable to processing

In view of the legally established eligibility criteria, it is considered that the personal data transmitted are adequate and necessary to fulfill the purpose, in compliance with the principle of data minimization, according to subparagraph c) of paragraph 1 of article 5 of the GDPR

However, the protocol is silent on the regularity of data transmission, as well as on the conservation period of the files sent. The protocol should contain rules on these two aspects.

With regard to records for audit purposes (audit logs), provided for in nos. 5 and 6 of Clause Eight, it is considered that the control of access to information received, either by the CGA or by the ISS, is necessary. However, yogs must also record, specifically within the scope of this protocol, the information sent, allowing tracking of what was transmitted and when.

AV. D. CARLOS I. 134 - 1o | 1200-651 LISBON S WWW.CNPD.pt | TEU+351 213 928 400 | FAX: +351 213 976 832

Process PAR/2019/34 2v.

c) Rights of holders

In relation to the content of Clause Six, on the "Right of Access", it is stated that [the] rights to information, access, erasure, rectification, opposition are exercised, in legal terms, at the request of those responsible for data processing. , identified in Clause Three as the CGA and the ISS. However, although the data subject is recognized as having the right to be informed

about the processing of data - in accordance with Articles 13 and 14 of the GDPR - this right materializes in the proactive obligation of the data controller to provide this information to the data subject and not from the latter requesting this information from the person in charge.

On the other hand, this list of rights is not exhaustive either, as it does not include the right to limit treatment, provided for in Article 18 of the GDPR.

In fact, there is no added value in the inclusion of this clause, not only because the guarantee of rights derives directly from the law and under the conditions established therein, but also because the data subjects are not even recipients of this protocol. Rather, it could be relevant to regulate compliance with the obligation provided for in Article 19 of the GDPR, which clearly applies in this context in which personal data is transmitted.

Therefore, this clause must be eliminated or, at most, amended in order to include an expedited means of communicating to the other controller (CGA or ISS), as recipient of the information, any request for rectification, erasure or limitation of treatment by part of the data subject.

d) Subcontractors

As for the content of Clause Five of the protocol, on the "Obligations of Processors", it is foreseen in paragraph 2 that those responsible for the treatment declare, from now on, that they authorize the Processor, whenever it deems it necessary, to subcontract any Entity [emphasis added] for the pursuit of processing activities, and, under the terms of paragraph 3 of the same clause, the subcontractor must deliver annually, upon notification to the person in charge, the list of authorized entities mentioned in the previous number.

It is understood that this wording is too general and permissive, not complying with the legal requirements of subcontracting provided for in Article 28, paragraph 2 and paragraph 4, of the GDPR, as the

Process PAR/2019/34 3

NATIONAL COMMISSION

DF DATA PROTECTION

The controller's option for what appears to be a general authorization for subsequent subcontracting does not preclude the processor's obligation to be able to carry out further subcontracting only if those processors present "sufficient guarantees of carrying out appropriate technical and organizational measures (...)», and the reference to any entity cannot be admitted.

In addition, a general authorization is not a blank letter, so there should, at the very least, be a reference to the requirements of the GDPR. On the other hand, the processor must immediately inform the person responsible for the treatment of any subcontracts that it makes and for what processing activities, and not only after one year and only upon notification of the person responsible for that purpose. According to the GDPR, if there are changes in relation to the initial authorization, the processor has the obligation to communicate them to the controller.

Finally, it remains to be clarified whether Instituto de Informática, I.P., in its capacity as subcontractor, and taking into account its legal attributions, is a subcontractor of the ISS or also of the CGA. This is an essential issue, as it will depend on who the processor has to fulfill his obligations to the controller.

MI. Conclusion

With the introduction of the changes identified above, the CNPD considers that there are no impediments to the conclusion of the protocol for the exchange of personal data between the Social Security Institute and Caixa Geral de Aposentações.

The final text of the protocol, after signature, must be sent to the CNPD for knowledge.

Lisbon, June 18, 2019

Filipa Calvão (President, who reported)

AV. D. CARLOS I, 134 - 1o | 1200-651 LISBON | WWW.CNPD.PT | TEL:+351 213 928 400 | FAX: +351 213 976 832