

NATIONAL COMMISSION
OF DATA PROTECTION

OPINION/2020/142

1. Order

The Insurance and Pension Funds Supervisory Authority (ASF) asked the National Data Protection Commission (CNPd) to issue an opinion on a draft regulatory standard (Draft) that aims to regulate the legal regime for the distribution of insurance and reinsurance, approved as an annex to Law No. 7/2019, of January 16.

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 of 2016 (General Regulation on Data Protection - RGPD), 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 August 8.

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

II. appreciation

The legal regime for the distribution of insurance and reinsurance ("RJDSR"), approved in an annex to Law no. and reinsurance, contained in Decree-Law No. 144/2006, of 31 July ("RJMS"), therefore it is necessary to adapt the regulations currently applicable to the new legislation, which covers the insurance distribution activity.

Pursuant to article 13 of Law No. 7/2019, of 16 January, ASF is empowered to adopt the regulatory standards necessary for the implementation of an extensive set of matters, namely to establish the documents that must instruct the process for the purpose of proving the conditions of registration of intermediaries

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insurance, reinsurance and ancillary insurance (paragraph jj), define the terms of the annual communication by insurance distributors to ASF of the identification of insurance intermediaries, ancillary insurance intermediaries and other persons who distribute the respective insurance products insurance (item uj), define the form of organization of the register and the

elements referring to each insurance or reinsurance intermediary and ancillary insurance intermediaries that must be included in the register (item w)), define the information to be made available to interested parties in addition to the registration of insurance or reinsurance intermediaries and ancillary insurance intermediaries (paragraph xj), establish the elements and information that must be communicated to the ASF within the scope of the procedures relating to the alteration of the conditions of access to the activity and the suspension and cancellation of registration (item yj) and establish the elements and information that must be communicated to the ASF for the purpose of controlling the qualifying holdings, (item zj).

Thus, the Project establishes the legal regime applicable to the new category of insurance distributors (insurance intermediaries on an ancillary basis) defining the terms under which automatic registration must be carried out; updates references to the categories of insurance intermediaries and insurance distributors; regulates access requirements in response to the new suitability requirements imposed by the RJDS; enshrines the duty of insurance and ancillary insurance intermediaries to have adequate procedures for the management of claims, reviews the specific criteria applicable to insurance brokers in terms of portfolio dispersion and regulates the procedure to be followed by insurance and insurance intermediaries to accessory title for providing information to the ASF.

Under the terms of the Preamble, this Project also brings together the various regulatory provisions applicable to insurance, reinsurance and ancillary insurance intermediaries, including, in addition to the content contained in Regulatory Standard No. 17/2006-R, of 29 December , matters relating to the definition of minimum conditions for professional civil liability insurance to be concluded by insurance, reinsurance and ancillary insurance intermediaries and the financial reporting of insurance, reinsurance and ancillary insurance intermediaries, revoking the referred to Regulatory Norm n° 17/2006-R, of December 29, the Regulatory Norm n.° 18/2007-R, of December 31, and the Regulatory Norm n.015/2009-R, of December 30.

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A - registration in the register of insurance, reinsurance and ancillary insurance intermediaries.

Since Sogo, Articles 2, 7, 14 and 15 regulate, respectively, the instruction of the registration process of an individual insurance agent, the registration process of an individual insurance broker, the of registration of reinsurance intermediaries and

registration of insurance intermediaries as an accessory natural person, providing that they are instructed with the registration form that includes the information contained in Annex 1 of the Draft regulatory standard. Note that Annex I includes personal identification data! of the candidate (full name, gender, date of birth, nationality, identity card, citizen's card, residence permit or passport, N1F, professional address, email and telephone address, website address, address of the establishment in that distributes insurance products). It also includes data relating to professional qualifications, the suitability of candidates, incompatibilities, identification data of the statutory auditor, the statutory auditor, the contact point for the purpose of centralizing the reception and response to complaints and the people with whom have close relationships.

In turn, paragraph c) of article 3 and paragraph 1 of article 8 of the Project determine that the application for registration of legal person insurance agent and legal person insurance broker must be accompanied by a form of registration that includes the information contained in Annex II, (identification of all the holders of the company's management body; identification of the holders of the company's management body responsible for the insurance or reinsurance distribution activity; identification of the statutory auditor ; identification of the risk analyst; identification of the contact point for the purpose of centralizing the reception and response to complaints or of the autonomous function responsible for managing the processes related to complaints that acts as a Centralized Reception and Response Point; identification of the partners, holders of direct or indirect participation, whether natural persons; declaration of the identity of persons with whom they have close relations; identity identification of partners or shareholders, natural persons, who hold shareholdings greater than 10% of the capital of the insurance, reinsurance or ancillary insurance intermediary, as well as the amounts of those shares).

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The data in question are adequate, relevant and limited to the purpose of exercising ASF's supervisory powers, complying with the principle of proportionality and data minimization provided for in Article 5(1)(c) of the GDPR.

In order to prove the access conditions provided for in article 11 and in paragraphs b) and c) of article 20 of the RJDSR, registration requests must also be accompanied by the recognition of the signature affixed by the candidate on the aforementioned form or, alternatively, , simple photocopy, front and back, of the identification document (identity card, citizen card or equivalent document of the person subject to registration), with express mention of the authorization to use this means to confirm the respective identity. The CNPD expresses, once again¹, the reservations that the copy of the identification

document raises regarding the value of the proof of identity, since the digitization of an identification document is easily manipulated, thus not guaranteeing the veracity of the data, in disrespect by the principles of accuracy and integrity of personal data enshrined in points d) and f) of paragraph 1 of article 5 of the GDPR. It is reaffirmed that the simple copy of the identification documents constitutes a document without any probative legal value, precisely because of the ease of handling, so it is recommended to review paragraph 1 of articles 2, 7 and 15. from the project.

The application must also be accompanied by documents proving the applicant's qualification and the criminal record certificate or equivalent document issued by a competent judicial or administrative authority in the applicant's home Member State or country of origin. The Project here limits itself to reproducing the provisions of paragraph 7 of article 14 of the RJDSR regarding the obligation to present the criminal record certificate to prove the suitability of the candidate, so the basis for its collection rests in article 10 of the GDPR.

B - Registration

Pursuant to article 56 of Law No. 7/2019, of 16 January, the ASF is the authority responsible for creating, maintaining and permanently updating the electronic register of

1 See Opinion No. 31/2017, of May 17, 2017, available at https://www.cnpd.pt/bin/decisooes/Par/40_31_2017.pdf

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insurance, reinsurance and ancillary insurance intermediaries resident or whose registered office is located in Portugal, which shall define, as a rule, the form of organization of the registration and the elements referring to each reinsurance and ancillary insurance intermediary that must be included in the register, the Project defines in Annex III the elements that must be included in the register.

In turn, paragraph 2 of article 59 grants the ASF the power to define the information to be made available, on its website, to interested parties, which must include at least the elements provided for in paragraphs 2 to 4 of article 58 of Law No. 7/2019, of January 16. As for the elements to be made available on the ASF website, it appears that article 59 reproduces the elements contained in paragraph 2 of article 58, of Law No. 7/2019, of 16 January, only adding the address of the establishments where the insurance distribution activity is carried out, the identification of the insurance company to which it is bound by an exclusivity contract, and the companies with which the insurance agent or insurance intermediary, in an ancillary

capacity, is bound by contract of exclusivity is allowed to work.

This reaffirms the pronouncement made earlier on the proposed Law No. 138/XIII/3.a (GOV) in Opinion No. 56/2018, of November 20, 2018² which is reproduced here: "it is important to understand if what is intended is a record in the form of a list of persons entitled to carry out certain activities and generally accessible to any interested party on the ASF website, or rather a model that allows confirmation, through consultation, by any interested party from an ASF database, if a particular person or entity is registered as such. The combined reading of Article 56 and 59 is not entirely enlightening.

The solution, from the point of view of personal data protection, is not indifferent. The second hypothesis, unlike the first, fully complies with the principle of data minimization and proportionality enshrined in Article 5(1)(c) of the GDPR, which must be ensured with appropriate technical and organizational measures in the pursuant to Article 25(2) of the GDPR.

In any case, even if the first hypothesis is chosen, it must be borne in mind that the principle of data minimization requires that only the information

² Available at https://www.cnpd.pt/home/decisooes/par/40_56_2018.pdf

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strictly necessary to verify the legitimacy of a person or entity to carry out one of the activities listed therein, and cannot go beyond the data listed in paragraph 2 of article 58". The CNPD notes as positive that Article 59 of the Project only provides for the publication of elements that are strictly necessary for the purpose in question. It recalls, however, the need to adopt appropriate technical and organizational measures to ensure that, by default, only personal data strictly necessary for the specific purpose of the treatment can be processed, an obligation that extends to its accessibility.

C - Treatment Policy

Pursuant to Article 33 of the Draft, the treatment policy defines the principles adopted by the insurance or insurance intermediary on an ancillary basis in the context of the respective relationship with policyholders, policyholders, beneficiaries or injured third parties, it must provide, among other things, others, the equitable, diligent and transparent treatment of policyholders, policyholders, beneficiaries or injured third parties and the adequate treatment of the personal data of these categories of holders. It is true that the Project is limited to fulfilling the duty provided for in subparagraph t) of paragraph 1 of

article 24 of Law no. No. 56/2018, of November 20, 2018³, mentioned above, in the sense of the need for its clarification. The CNPD recommends the reformulation of article 33 of the Project in order to clarify its meaning and to adopt a legal language more consistent with the R6PD, since the adjectives fair and transparent there refer to the processing of personal data and not to their holders.

D - Complaints management

The Project fulfills the duty of insurance and ancillary insurance intermediaries to have adequate procedures for managing complaints. Pursuant to paragraph 2 of article 39, claims by policyholders, policyholders, beneficiaries or injured third parties must contain the relevant information for the respective management,

³ Available at https://www.cnpd.pt/home/decisoes/par/40_56_2018.pdf

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including, at least, the complainant's full name and, if applicable, the person representing him, the status of the complainant, contact details, the complainant's identification document number, description of the facts that motivated the complaint with an indication of the intervening parties and the date on which the facts occurred, as well as the date and place of the claim.

However, the collection and conservation of personal data comply with the principles of purpose and data minimization, so only the data strictly necessary for the purpose in question should be collected - cf. Article 5(1)(b) and c) of the GDPR. It is therefore recommended to specifically list the personal data to be processed in addition to those mentioned above, even in accordance with the principles of loyalty and transparency, set out in Article 5(1)(a) of the GDPR.

On the other hand, Article 40 provides for the preparation of an annual report on the management of complaints, containing a part relating to elements of a statistical nature segmented according to the categories listed in Annex V. In these terms, the information to be processed must be already constituted only by aggregated data.

E - Communications and disclosure of personal data

The Project provides that communications between ASF and those engaged in the insurance and reinsurance distribution activity will be carried out through this entity's portal, as well as the publication on its website of information regarding each

intermediary and the distribution activity. of insurance and reinsurance. In this regard, it is important to recall the importance of adopting organizational and technical measures that guarantee compliance with data protection principles and the rules provided for in the GDPR, in particular in article 25 and in paragraph 1(b) of article 32 of the GDPR on Information Security (ability to ensure confidentiality, integrity, availability and permanent resilience of processing systems and services).

Thus, the CNPD recommends the introduction of an item that defines the technical measures to be implemented, namely cryptographic protocols such as TLS to protect information in transit via the Internet; perimeter network security using firewalls and architectures including demilitarized zones (DMZ); Web Application FirewaUs (WAF) providing protection to the Web server, monitoring and controlling http traffic; logical segregation of information, restricting access by functional competence,

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hierarchy and using systems of nominal identification, registration and monitoring of accesses; information encryption and mechanisms for auditing and logging system, application and security events.

HL Conclusion

Based on the above grounds, the CNPD recommends:

- a) The revision of paragraph b) of articles 2, 1 and 15 of the Project concerning the presentation of a simple photocopy, front and back, of the identification document to prove the candidate's identity;
- b) The reformulation of article 33 of the Project in order to clarify its meaning and to adopt a legal language more consistent with the GDPR;
- c) The introduction of an item that defines the technical measures to be implemented, which guarantee compliance with the principles of data protection and the rules provided for in the RGPD regarding information security in the communications provided between the ASF and the insurance distributors as well as in the publication on its website of information relating to each intermediary.

Lisbon, December 3, 2020

Maria Cândida Guedes de Oliveira (Rapporteur)