

NATIONAL COMMISSION

DATA PROTECTION

OPINION/2019/75

I. Order

The Directorate-General for Education and Science Statistics (DGEEC) requests the National Data Protection Commission (CNPd) to issue an opinion on the draft Protocol on the automated processing of personal data within the Information System of the Ministry of Education and the Social Security Information System.

The request made and the opinion issued 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 from Law No. 58/2019, of 8 August.

The protocol under analysis aims to regulate the exchange of information between the Social Security Institute, I.P. (ISS) and the Directorate-General for Statistics for Education and Science (DGEEC) which will allow the former to verify the school situation in an educational establishment, for the purposes of recognition and maintenance of the right to family allowance for children and young people, scholarship of study, survivor's pension and other benefits and, for the latter, to verify the position in the family allowance level, for the purposes of attribution and maintenance of support from the School Social Action (ASE).

The system described will be implemented by Instituto de Informática, I.P. (Instituto de Informática) and will be based on web services technology, allowing each entity (DGEEC and ISS) to consult information residing in the other's systems. The Agency for Administrative Modernization, I.P. (AMA) is responsible for managing the Public Administration Interoperability Platform, the platform on which communication between the two bodies will be based.

DGEEC and ISS are responsible for data processing. The Instituto de Informática and the AMA act as subcontractors of the treatment.

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

Process PAR/2019/58 1v.

The legal condition for this treatment will be based on the consent of the holders, which will be collected by DGEEC.

Regarding security measures, point 4 of clause 4.a states that “the communication of information is carried out through a dedicated circuit between DGEEC and WADA”.

As for the records of consultations, numbers 5 and 6 of clause 4.a clarify that it is up to the DGEEC to ensure the registration of consultations and that the Instituto de Informática also performs the registration of accesses.

At the request of the CNPD, an Impact Assessment on Data Protection (AIPD) was subsequently submitted.

The AIPD describes the purposes and conditions of data processing, as well as the categories of data involved. Several preventive mechanisms are presented that will be applied to the treatment and that involve the pseudonymization of data, encryption "of the variables that contain data on children and monitoring of accesses, either by the DGEEC or the Instituto de Informática.

## II. appreciation

The protocol in question aims to define the terms of the collaboration between the grantors with a view to the electronic exchange of information between the ISS, IP, and the DGEEC, related to the proof of the educational situation of the educational establishment for the purposes of recognition and maintenance. of the right to family allowance for children and young people, study grants, survivor's pension and other benefits, pensions and social support from the SS, as well as, for the purposes of proving placement in the family allowance scale for the purposes of attribution and maintenance of School Social Action Support (ASE).

The communication of personal data constitutes a processing of personal data, within the meaning of Article 4(2) of the GDPR.

### a) Conditions for access to information - Clause four

#### r NATIONAL COMMISSION

#### DATA PROTECTION

Paragraph 5 of clause 4.a states that “the DGEEC registers all information queries carried out within the scope of this protocol”. It is understood, therefore, that the DGEEC is responsible for ensuring the registration of both the accesses made by the ISS to the DGEEC and the accesses made by the DGEEC to the ISS.

In accordance with good practice, when an entity receives a request to consult its systems, it must itself register this access.

Only in this way is it possible for the entity to guarantee that the event record is reliable, complete and, ultimately, auditable.

Leaving the responsibility for recording queries from both systems to one entity's side does not seem to provide sufficient guarantees about the reliability of the yog.

Thus, it is suggested to amend paragraph 5 of Clause Four in order to establish that, without prejudice to the registration of accesses by the DGEEC, each of the bodies must proceed with the registration of the consultations it receives.

Process PAR/2019/26 [ 2

b) Prior consent - Clause five

Decree-Law No. 55/2009, of 2 March, establishes the legal regime applicable to the attribution and operation of support within the scope of school social action, as a modality of support and educational complements provided for in articles 21 et seq. of the Basic Law of the Educational System, approved by Law No. 46/86, of October 14, in the wording given by Laws No. 115/97, of September 19, and 49/2005, of August 30 . Under the terms of article 10, access to benefits arising from support within the scope of school social action is determined according to the situation of students or their households and in particular their socio-economic condition, which is reflected in their respective positioning in a given income bracket and the corresponding support bracket.

The Social Security Institute, IP, is responsible, in particular, for the management of family allowances for children and young people, protection in the event of family expenses within the scope of the family protection subsystem and the survivor's pension within the scope of the General Social Security under the terms, respectively, of Decree-Law no. 176/2003, of 2 August, as amended, and Decree-Law no. 322/90, of 18 October. However, these legal provisions are limited to providing as presuppositions for the attribution and maintenance of certain benefits, the conditions that the

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

Process PAR/2019/58 2v

interested parties have to fill in, the proof of which is now intended to be expedited. It should be noted that paragraph 2 of article 29 of Decree-Law no. 176/2003, of 2 August, expressly refers to the law the determination of ways to expedite this proof and the verification of the fulfillment of the legal requirements in the specific case.

Within the scope of the Simplex+ Program, the Automatic School Testing measure was defined, which aims to build a web service to automate the school test for students at different levels of education, for the purpose of recognizing and maintaining the right to family allowance for children and young people, study, survivor's pension and other benefits, pensions and social

support. Ordinance No. 191/2019, of 24 June, regulates proof of school status for the purposes of attribution and maintenance of family allowance for children and young people and scholarships, as well as the attribution of benefits for death and maintenance of a survivor's pension under the general social security system. Pursuant to article 2 of the Decree «Proof of school status is made ex officio through the exchange of information resulting from the articulation between the ISS and the DGEEC.», and pursuant to paragraph 2 of article 6 « The form of exchange of information between the entities managing the benefits and the entities responsible for the information systems in the areas of Education and higher education are set out in a protocol».

Thus, it appears that, in the absence of a law that expressly determines the ways of streamlining the evidence and verifying the fulfillment of the legal requirements in the specific case for the attribution and maintenance of certain benefits, as required by paragraph 2 of article 29 .° of Decree-Law no. 176/2003, of 2 August, only the consent of the data subjects can legitimize this processing of personal data - cf. Article 6(a) of the GDPR.

It is true that, in order for the consent of the data subjects to be relevant and valid, there must be alternative modalities or forms of proof of the assumptions for attributing or maintaining the benefits in question (cf. point 11 of article 4 of the GDPR) . However, article 43 of Decree-Law no. in Article 4(11) of the GDPR.

c) Persons responsible and subcontractor for the treatment - Clause Six

Process PAR/2019/26 3

f NATIONAL COMMISSION

DATA PROTECTION <v

The Protocol provides, in clause six, that the ISS, IP, and DGEEC are considered responsible for the treatment, with the Instituto de Informática and AMA, IP being subcontractors. From the analysis of the Protocol, it appears that we are dealing with a case of joint liability, under the terms of article 26 of the GDPR, which presupposes the existence of an agreement that duly reflects the respective roles and relationships of the joint controllers in relation to the data subjects. . The CNPD therefore suggests that the content of the clause be amended in order to contain an express reference to the existence of an agreement between the two controllers that enshrines their respective responsibilities for compliance with the RGPD.

d) Subcontracting - Clause Nine

As for Clause Nine of the protocol (Subcontracting) it provides that “processors may, whenever they deem it necessary,

subcontract any entity for the pursuit of activities related to the processing”.

It should be noted that Article 28(2) of the GDPR provides for the possibility for a processor to contract another processor, subject to "specific or general prior authorization from the person in charge, but obliges the processor to inform the data controller" of any changes intended to increase the number or replacement of other subcontractors, thus giving the controller the opportunity to object to such changes.

On this point, the AI PD only mentions that «/ the case of involvement of DGEEC subcontractors (companies) they must be obliged to specific clauses within the scope of the RGPD in relation to public procurement in accordance with the guidelines issued by SG1».

It is understood that the wording of Clause 9 is too general and permissive, not complying with the legal requirements for subcontracting provided for in Article 28, paragraph 2 and paragraph 4, of the GDPR, since the subcontractor can only proceed to further subcontracting if these subcontractors provide 'sufficient guarantees of

1 General Secretariat,

AV. D. CARLOS I, 134 - 4

1200-651 LISBON | WWW.CNPD.PT | TEL:+351 213 928 400 | FAX: +351 213 976 832

Process PAR/2019/58 3v.

implementation of appropriate technical and organizational measures (...)»> no reference to any entity may be accepted.

Therefore, it is recommended that references to subcontractors' obligations set out in Article 28(2) and (4) of the GDPR be included.

#### e) Rights of data subjects - Tenth Clause

Clause ten of the Protocol, on the title, certainly by mistake, "Right of access Guardianship of the Rights of Data Subjects" grants the Instituto de Informática the competence to guarantee the exercise of any of the rights of data subjects. However, under the GDPR, such competence rests with the data controller (cf. articles 13 to 20), with the Instituto de Informática clearly identified in this Protocol as a subcontractor (clause six).

It is therefore suggested to change the wording of subparagraph a) to "collaborate with the person in charge in guaranteeing the exercise of any of the rights of data subjects", in accordance with the provisions of subparagraph e) of paragraph 3 of article 28. ° of the GDPR)

The clause also provides that the Instituto de Informática is responsible for informing those responsible for the treatment of any corrections or situations of erasure of personal data that occur at the request of the data subjects. Here too, Articles 16 and 17 of the GDPR grant the data subject the right to obtain from the controller the rectification and erasure of their personal data, so this provision must be reviewed.

Finally, subparagraph c) of the same clause establishes that the Instituto de Informática is responsible for ensuring that there is a legitimate basis for processing personal data under the terms of article 6 or 9 of the RGPD. Although the competence to verify the conditions of legitimacy of the treatment rests only with those responsible for the treatment, in this case it is understood the attribution to the subcontractor of the task of verifying, in particular, the existence of valid consent of each interested party in social support for each consultation carried out. .

Therefore, the CNPD recommends amending the text of clause ten of the Protocol in order to incorporate the suggestions mentioned above.

Process PAR/2019/26 4

/ NATIONAL COMMISSION

DATA PROTECTION

f) Impact Assessment on Data Protection

The IAPD pointed out that there may be a significant risk of identification of the holders, but that the harmful effects that may arise are negligible.

Considering that the most sensitive data involved in this treatment are those communicated by the ISS, namely the family allowance level and considering that it allows the deduction of the level of income, in the event of an improper disclosure or access to information, it considers the CNPD that there is a risk of stigmatization and consequent discrimination against children and young people that cannot be qualified as insignificant.

However, as mitigating measures were established following the aforementioned assessment, the CNPD has nothing more to add.

III. 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 Instituto da Segurança Social, I.P. (ISS) and the

Directorate-General for Education and Science Statistics (DGEEC).

Lisbon, November 13, 2019

Maria Cândida Guedes de Oliveira (Rapporteur)

Av. D. CARLOS I, 134 - 1st j 1200-651 LISBON ! WWW.CNPD.PT j TEL: +351 213 928 400 I FAX: +351 213 976 832