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National Data Protection Commission

OPINION/2023/4

i. Order

1. The Bank of Portugal (BP) submitted to the National Data Protection Commission (CNPD), for an opinion, the Protocol to be signed with Caixa Geral de Aposentação, I.P, (CGA), governing the terms of sharing information relating to to workers formerly integrated into the extinct Caixa de Abono de Família dos Empregados Bancários (formerly CAFEB) for compliance, by BP, with its legal obligations in terms of social protection.

2. The CNPD issues an opinion within the scope of its attributions and competences as an independent administrative authority with authoritative powers for the control of the processing of personal data, conferred by subparagraph cj of paragraph 1 of article 57, in conjunction with subparagraph b) of paragraph 3 of article 58, and with paragraph 4 of article 36, all of Regulation (EU) 2016/679, of 27 April 2016 - General Regulation on Data Protection (hereinafter GDPR), in conjunction with the provisions of Article 3, Article 4(2), and Article 6(1)(a), all of Law No. 58/2019 , of August 8, which implements the GDPR in the internal legal order.

II. Analysis

3. This Protocol aims to regulate the sharing of information between BP and the CGA regarding workers formerly integrated into the extinct Caixa de Abono de Família dos Empregados Bancários (formerly CAFEB) in order to comply with BP's legal obligations in terms of social protection.

4. BP is responsible for the social protection (eventual old age) of workers formerly integrated into the extinct Bank Employee Family Allowance Fund under the terms of the applicable Collective Bargaining Agreements.

5. The mission of the CGA is to manage the public social security system, in terms of retirement, retirement, survival and other special nature pensions under the terms of article 20-A of Decree-Law no.

167-C/2013, of December 31.

6. Under the terms of clause 100.a of the Company Agreements applicable to BP, whenever benefits of the same nature are granted by both Parties to the Protocol, BP will only guarantee the difference between these amounts. Thus, it becomes necessary to define a procedure for the direct exchange of information between the BP and the CGA in order to promote the swift conclusion of the processes in question.

7. In this context, and in the absence of a law that expressly determines how to verify the fulfillment of the assumptions for granting by the BP the difference in the value of the retirement pension awarded

by the CGA, the basis of legitimacy for this processing of personal data will have to be brought back to the consent of the data subject - cf. Article 6(1)(a) of the GDPR. Obtaining the consent of the data subject must comply with the provisions of Article 4(11) and Article 7 of the RGPD.

8. BP attached Annex II regarding the consent of the data subjects to exchange information with the CGA with a view to calculating the amount of the pension to be paid, clarifying doubts about the contribution periods and clarifying the application for the situation of the pension, which meets the legal requirements in this matter.

9. It should be noted, however, that paragraph 4 of Clause Three stipulates that the BP may communicate the information in question to the Sociedade Gestora dos Fundos de Pensões do Banco de Portugal (SGFPBP), so that in Annex II, concerning the consent of the data subjects, this entity must be listed as the recipient in compliance with the provisions of Article 14(1)(e) of the RGPD.

10. Under the terms of clause three, BP transmits annually to the CGA a computer file containing the following elements relating to the beneficiaries of the benefits assumed by it: Name; Tax identification number (NIF), Contributory career; Pension amount; the name and NIF fields are previously filled in by the BP, and the CGA must return the file with the remaining fields filled in.

11. The data subject to processing are adequate and limited to what is necessary for the purpose in question in compliance with the principle of necessity and the minimization of data provided for in paragraph c) of paragraph 1 of article 5 of the

RGPD.

12. The aforementioned computer file in CSV/XLS format will always be sent via email, with encryption of the computer files to be transmitted, the respective password being sent separately, by SMS, between the interlocutors referred to in paragraph 1 of the Fourth Clause (cfr. No. 2 of the same Clause).

13. The CNPD recommends the implementation of manual or automated control mechanisms that ensure that the set of personal data contained in the file to be transmitted corresponds to the protocol, as well as the implementation of control mechanisms that guarantee that the information compiled in the file to be transmitted concerns only the group of target holders (workers formerly integrated into the former CAFEB and who are beneficiaries of retirement pensions by the CGA) and the adoption of measures aimed at interdicting the reproduction, portability and retransmission to third parties of the information shared between the parts.

14. Under the terms of Clause Six, the data transmitted under this Protocol are kept for a period of one year, with BP responsible for their subsequent destruction, in compliance with the principle of limitation of conservation provided for in paragraph e) of no. 1 of Article 5 of the GDPR.

15. Clause eight provides that, «in the face of any requests made by the holders of personal data, for the purposes of exercising the rights provided for in the RGPD, the Parties agree to communicate with each other expeditiously, namely via email, using for this purpose the contacts of the interlocutors designated in the fourth clause».

16. This clause is intended to regulate compliance with the obligation provided for in article 19 of the RGPD, which clearly applies in this context in which there is transmission of personal data. The CNPD therefore suggests the reformulation of the eighth clause, clarifying the obligation provided for in article 19 of the RGPD, of notifying the recipient (BP or CGA) of the rectification or erasure of personal data or limitation of treatment that has been carried out at the request of the data subject.

17. In turn, Clause Nine enshrines the duty of mutual assistance to ensure compliance with the obligations of the parties provided for in Articles 32 to 34 of the RGPD, and for this purpose, each Party must also notify the other of the occurrence of a

breach of personal data, within 24 hours of becoming aware of it. These provisions reflect the content of article 28(3)(f) of the GDPR applicable to subcontractors. The same can be said of the tenth clause of the Protocol, which merely reproduces paragraph h) of paragraph 3 of the same article.

18. It is strange that a Protocol concluded between two entities that are independent of each other, which are responsible for the treatments in question, without any compatible relationship in the light of the provisions of the RGPD, comes to claim for the granting parties a legal regime that the RGPD reserves for subcontractors. It is suggested, therefore, the reweighting of Clause Nine.

19. With regard to the listed security measures, without prejudice to the need for additional clarification on the omitted points identified above, they seem appropriate. It is underlined, however, the need for permanent verification of its compliance.

III. Conclusion

20. Thus, based on the reasons set out above, the CNPD recommends:

a) The reformulation of the content of Clause Eight in order to focus only on the rectification and elimination of personal data and limitation of the treatment that has been carried out at the request of the data subjects;

b) The reweighting of Clause Nine pursuant to the observations made in point 17.

Approved at the meeting of January 10, 2023

(Filipa Calvão (President)