

National Data Protection Commission

OPINION/2022/115

I. Request

1. The Social Security Institute, I.P. requested the National Commission for Data Protection (CNPd) to issue an opinion on the draft Protocol for the Transmission of Identification Data within the scope of the Promotion and Protection Processes, Civil Sponsorship and Authorization to Participate in Arts and Shows, to be concluded between the Institute of Social Security, I.P. (ISS, I.P.), the Social Security Institute of Madeira, I.P. -RAM (ISS, IP-RAM), the Social Security Institute of the Azores. I.P.R.A (ISSA, IPRA), the Institute of Informatics, I.P. (II, I.P.) and the National Commission for the Promotion of the Rights and Protection of Children and Young People (CNPdPCJ).

2. The request for an opinion was not accompanied by the impact study on data protection which, pursuant to paragraph 4 of article 18 of Law no. 43/2004, of 18 August, last amended by Law No. 58/2019, of August 8, is mandatory and must instruct applications submitted to the CNPD for consideration.

3. 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 paragraph c) of paragraph 1 of article 57, paragraph b) of paragraph 3 of article 58 and paragraph 4 of article 36, all of Regulation (EU) 2016/679, of April 27, 2016 - General Regulation on Data Protection (hereinafter 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 8 August, which implements the GDPR in the internal legal order.

II. Analysis

4. The Protocol under analysis (hereinafter Protocol) identifies as its scope "regulating the terms under which the transmission of data between ISS, I.P. or II, I.P and the CNPDPCJ [...] in the legal framework in force takes place", namely in relation to three types of processes: authorization processes for participation in arts and shows, promotion and protection processes and civil sponsorship processes (Clause One).

5. Under the terms of Clause Two, the purposes of the Protocol are "to implement the form, extent and limit of data transmission between the II, IP, the ISS, IP and the CNPDPCJ within the scope of the IT Management System (SGI) Protege+, to management of CPCJ and promotion and protection processes, authorization processes for participation in arts and shows and civil sponsorship processes" (n.º 1).

6. Furthermore, it is intended to ensure the standardization of procedures and speed in accessing information on the data of the child involved in the aforementioned processes, as well as their parents, legal representatives, de facto guardians and civil godparents (n. 2 of the same clause).

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7. Protege+ is characterized, in paragraphs j) to l) of the recitals, as a computer management system, which "aims to design and implement a new information system, called PCJ, to support the processes of the System for the Promotion of Human Rights and Protection of Children and Youth".

8. Such a system "[d]everá will still allow the management of the CPCJ with regard to their characterization and enable the sharing of processes and collaboration between them" (paragraph l) of the recitals).

9. As well as, the Protocol refers to, allowing the sharing of information between the CNPDPCJ and the CPCJ in order to "centralize the identification information of citizens in a single database, guarantee a single source of reliable and validated information, avoid duplication of databases, avoiding errors and information between the two entities [...] avoiding asking the citizen several times for the same information and access to the household and contacts[c]jects in the case of children in danger" (paragraph p) of the recitals).

10. It is also intended that the system allow communication between the CPCJ and the Public Ministry (paragraph q) of the

recitals).

11. Under the terms of the Protocol, it is up to the CNPDPCJ to assign profiles to the elements of the CNPDPCJ, as well as to the elements of the CPCJ and to the prosecutors who are the Public Prosecutor's Office in relation to the respective processes.

12. It is said that the processing of all processes is carried out exclusively by the elements of the installed CPCJ and by the CNPDPCJ, without external intervention (item m) of the recitals). However, the law does not imply that the CNPDPCJ can proceed with the processing of any processes, but only the CPCJ.

13. On the other hand, as mentioned above, it is intended, through the information system, to manage the CPCJ. Now, since the CPCJ are not part of this Protocol, it is not understood how it can be intended that this serves the purpose of managing the CPCJ, which is their exclusive competence, moreover being identified in the Protocol as responsible for the information that through of the Protocol is intended to regulate.

14. On the other hand, under the terms of paragraph 7) of article 4 of the RGD, the controller is "the natural or legal person, authority, public authority, agency or other body that, individually or jointly with others, determines the purposes and means of processing personal data".

15. The Protocol intends to consider the CNPDPCJ as responsible for the processing of personal data object of the Protocol, as it is the centralizing body of the PCJ System, attributing to it, among others, the functions of processing processes (paragraph m) of the recitals).

16. Now, the CNPDPCJ is a legal person governed by public law with administrative autonomy, which operates within the scope of the Ministry of Labor, Solidarity and Social Security, "with responsibilities for coordinating

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strategic defense of children's rights" (preamble to Decree-Law No. 159/2015, of August 10, in the version updated by Law No. 139/2017, of November 10), whose mission is to "contribute for the planning of State intervention and for the coordination, monitoring and evaluation of the action of public bodies and the community in the promotion of the rights and protection of

children" (No. 1 of Article 3 of that law).

17. In this sense, it is bound by the principles of legality and specialty, so that, in its performance, it can only perform the acts for which it is legally qualified.

18. In this way, regardless of the competences, functions and responsibilities that the Protocol intends to attribute or recognize to it, the CNPDPCJ can only be responsible for the processing of processes when the law expressly provides for it and under the terms provided therein. That is, the CNPDPCJ cannot handle the three types of processes that are intended to be regulated by the Protocol, whose processing belongs to the CPCJ, which must, naturally, be parties.

19. The same can be said in relation to the ISS, IP and other entities (IP-RAM and ISSA, IPRA) that appear in the Protocol as parties without their activity in this scope being regulated.

20. Incidentally, it is hard to understand that, having previously consulted the CNPD by the CNPDPCJ and having given an unfavorable opinion on many of the aspects regulated by the Protocol, these should once again be considered under the same terms.

21. In view of the above, and due to the lack of legitimacy of the CNPDPCJ in relation to the processing of personal data in the processes, the assessment by the CNPD of the other aspects of the Proiocoio, which must be reformulated, is impaired.

III. Conclusion

22. Under the terms and grounds referred to above, the CNPD understands that, under the terms in which it was presented, the Protocol is not in a position to be assessed, so it must be reformulated.

23. An impact assessment must also be carried out, which is mandatory under the terms of paragraph 4 of article 18 of Law no. 43/2004, of 18 August, last amended by Law no. ° 58/2019, of August 8, which must accompany the new proposal for a protocol that will be submitted to the CNPD for consideration, insofar as its clauses define binding rules between the parties on the processing of personal data, with effects on the data subjects themselves, which is why, materially, it has an external regulatory content.

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Approved at the meeting of December 21, 2022

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