

I. Order

1. The Securities Market Commission (CMVM) asked the National Data Protection Commission (CNPD) to issue an opinion on the draft Regulation that regulates the format of reporting duties to the CMVM by issuers of instruments financial institutions admitted to trading on a trading venue.

2. The CNPD's request, dated November 26, 2021, was subsequently sent to the Impact Assessment on Personal Data Protection (AIPD), which was submitted to this entity on February 22, 2022.

3. The CNPD issues an opinion within the scope of its powers and competences, as an independent administrative authority with powers of authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57, subparagraph b) of Article 58(3) and Article 36(4), all of Regulation (EU) 2016/679, of 27 April 2016 - General Data Protection Regulation (hereinafter GDPR) , 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 of August, which implements the GDPR in the domestic legal order.

II. Analysis

4. Pursuant to the provisions of Commission Delegated Regulation (EU) 2018/815, of 17 December 2018, which complements Directive 2004/109/EC of the European Parliament and of the Council, of 15 December, issuers with securities admitted to trading on a regulated market must prepare their annual financial reports in a European Single Electronic Format (ESEF). For this purpose, it is necessary to review CMVM Instruction No. 1/2010, which establishes the format of the different reporting duties of issuers with securities admitted to trading, taking the opportunity to carry out a full review of the aforementioned instruction with the aim of simplifying its wording and systematic and converting that instruction into a CMVM regulation.

5. The Project contemplates processing of personal data of the elements of the governing bodies and of the issuing directors (name, NIF, address, postal code, location, country, telephone, fax, email) of the representative (name and NIF); identification

data of representatives for operations with the market and with the CMVM (name, address, postal code, location, country, telephone, email, title and academic title); identification of the manager or related person regarding the transaction of managers of issuers (manager's TIN, TIN and name of related person, code of officer or related person) and also the TIN of the seller and the acquirer in own transactions.

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PAR/2021/114

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6. The CMVM needs to process the information in question for the exercise of the supervisory powers that are legally conferred on it.

6 of the GDPR.

7. The personal data being processed are adequate and necessary for the purpose of supervision exercised by the CMVM, in compliance with the principle of data minimization provided for in subparagraph c) of paragraph 1 of article 5 of the RGPD.

8. As for the form of reporting, article 7 of the Project provides that the information provided for in this regulation must be delivered and processed in the CMVM's extranet domain, based on a computer file, prepared in accordance with the provisions of the Annexes to this Regulation.

9. Thus, Annex I establishes that the disclosure of general information must be sent to the CMVM in pdf format and that periodic information must be the subject of a report in XBRL format, respecting the specifications defined in the ESEF Reporting Manual / XBRL International Working Group Note.

10. Note that the data referred to in annexes II, III and IV are submitted via file, in ASCII format. This format is text and universally readable, with no place for any type of cipher. There is, however, a risk of illicit access to these unencrypted data, so it is recommended that the solution proposed in paragraph 3 of point 8 of the AIPD (activate database access logs and integrate them with the platform management system (SIEM)), is extended to control unauthorized access to said files.

11. It should be noted that there is no information in the Draft Regulation, nor in the IAPD carried out, that allows us to know where these files are stored, what is the control of access to them and what is the period of conservation until their elimination.

Thus, the CNPD is not empowered to comment on the adequacy of any measures to ensure data protection, in compliance

with the principles of limitation of conservation, integrity and confidentiality provided for in subparagraphs e) and f) of no. 1 of article 5 of the GDPR, noting, in any case, the need for its adoption.

12. In turn, point 7 of Annex IV, relating to transactions by managers of issuers, establishes that the report of transactions in other securities, other than shares, carried out by the governing bodies and other managers, must be sent to the CMVM, by email, a processing operation that is not analyzed in the AIPD.

13. Finally, in point 3.2 of the AIPD, it is stated that the information sent to the CMVM “in practice corresponds in a functional way to public information that can be consulted through the Ministry of Justice (MJ) portal, with access to NIFs and the addresses of administrators. Information that is not on the website of the

PAR/2021/114

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National Data Protection Commission

MJ is limited to contacts - telephone and e-mail, as well as the academic title of each person». However, in order to safeguard personal data that are not public and guarantee the lawfulness of access and subsequent processing of this information, the CNPD understands that contact data should only be accessible to CMVM employees who have a real need to know them for the execution of their functions, in accordance with the principles of proportionality and minimization of personal data (cf. Article 5(1)(c) of the GDPR).

14. Therefore, in line with what was observed in point 8 of the AIPD, it is recommended that the information dissemination system (SDI) be equipped with a profile management scheme with different access permissions depending on the need to know the data.

III. Conclusion

15. The analysis of the draft CMVM Regulation does not raise new questions from the point of view of personal data. The CNPD only recommends, under the terms and on the grounds set out above, the adoption of measures to control undue access to computer files and, also, that the information dissemination system be equipped with an access profile management system.

Approved at the session of March 22, 2022

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