

I. Order

1. The Securities Market Commission (CMVM) asked the National Data Protection Commission (CNPd) to issue an opinion on the draft Regulation on the prudential supervision of investment firms and the respective recovery plans.

2. An Impact Assessment on the Protection of Personal Data (AIPD) relating to the present draft CMVM regulation was sent as an attachment.

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.

4. Decree-Law No. 109-H/2021, of 10 December, which approves the Investment Firms Regime, transposes Directive No. 2019/2034 of the European Parliament and of the Council into the national legal system. , of 27 November 2019, on the prudential supervision of investment firms.

5. The aforementioned diploma transferred to the CMVM the competence of prudential supervision of investment companies. Therefore, it is necessary to create a specific regulatory framework for these entities.

6. Pursuant to Article 1 of the Project, this Regulation makes some changes to CMVM Regulation No. 2/2007, of 10 December, relating to the exercise of financial intermediation activities, reflecting the fact that the authorization of those entities to be granted by the CMVM and for the registration to take on an unofficial nature.

7. CMVM Regulation no. 1/2020, of 25 February, concerning the submission of information to the CMVM for prudential supervision purposes, is also amended to establish the periodic reporting duties of financial information by investment firms.

8. It also amends CMVM Regulation No. 9/2020, of 16 December on the self-assessment report of governance and internal

control systems, in order to clarify the regime and impose on companies

II. Analysis

Av. D. Carlos 1,134.1° 1200-651 Lisbon

T (+351) 213 928 400 F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt

PAR/2022/62

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investment to send these reports to the CMVM, by virtue of becoming the prudential supervisor of these entities.

9. The Regulation also establishes the procedures relating to the presentation, maintenance and review of the recovery plans of investment companies subject to this regime, as well as the procedures applicable to those entities benefiting from the simplified obligations regime regarding the content of the plans.

10. Lastly, CMVM Regulation no. 6/2018, of 3 December, concerning investment advisory firms, as well as the provisions of CMVM Regulation no. 1/2011, of 30 March , relating to investment consultancy companies due to the extinction of this figure and its incorporation into the single category of investment company, adopted by the Investment Companies Regime.

11. From the point of view of personal data protection, only the amendments to CMVM Regulation No. 2/2007, of 10 December, provided for in Article 2 of the Project, are relevant. Thus, article 2 of Regulation 2/2007 provides that requests for authorization to start the activity of investment firms are instructed in accordance with European Union legislation, namely those provided for in the Delegated Regulation (EU 2017/1943, of the Commission of 14 July 2016, in Articles 3, 4 and 5 of Delegated Regulation EU 2017/1946, of the Commission of 11 July 2017 and in Implementing Regulation EU 2017/1945, of the Commission of 19 June 2017.

12. As for registration requests for the exercise of financial intermediation activity by credit institutions, they are instructed in accordance with European legislation, namely those provided for in Articles 1 and 6 of the Commission's Delegated Regulation EU 2017/1943, of July 14, 2016.

13. Article 6(1) now states that the financial intermediary that is a credit institution must notify the CMVM of the person

responsible for the compliance control system, within a maximum period of 5 days after the appointment. In turn, article 7 now provides that “Any changes to the elements on the basis of which registration was granted must be communicated to the CMVM within a maximum period of 30 days after its verification, without prejudice to the provisions of article 15 of the Investment Companies Regime’.

14. The personal data being processed are data relating to the members of the governing and supervisory bodies, as well as the persons responsible for the control functions, namely those responsible for the compliance control functions, for the regulatory compliance in terms of prevention of money laundering and terrorist financing, risk management and auditing

PAR/2022/62

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internal. They include data contained in the identification document (including name and nationality), curriculum and contact details.

15. The CMVM needs to process the information in question for the exercise of the supervisory powers legally conferred on it, so its treatment is legally justified in subparagraph e) of paragraph 1 of article 5 of the R6PD.

16. The personal data being processed are necessary and adequate 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.

17. Information is reported in writing, via email or extranet of the CMVM, which will be stored on the CMVM server, in a segregated folder.

18. As the data update process is done manually after receiving emails, AIPO identifies the risk of the manual procedure not being carried out and the data not being updated and also the risk of the data being altered or disclosed to the 3rd. As mitigating measures, it is recommended to implement an automatic process for receiving data, through the Electronic Único Desk and ensuring that there is a record (log) of the loading and access to data, with which you agree.

NI Conclusion.

19. The analysis of the draft CMVM Regulation does not raise new questions from the point of view of personal data.

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of the GDPR.

Maria Cândicía Guedes de Oliveira (Rapporteur)

Av. D. Carlos 1,134.1º 1200-651 Lisbon

I (+351) 213 928 400 F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt