

I. Order

1. Banco de Portugal requested the National Data Protection Commission (CNPD) to issue an opinion on the draft revision to its Instruction no. counterfeit, counterfeit or suspected metal banknotes and coins.

2. The CNPD issues an opinion within the scope of its attributions 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, 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, paragraph 2 of article 4, and paragraph a) of paragraph 1 of article 6, all of Law n° 58 /2019, of 8 August, which enforces the GDPR in the domestic legal order.

II. Analysis

3. The procedures to be observed in the retention of metallic notes and coins, whose falsehood is manifest or there is reason to be presumed, were regulated by Instruction No. 38/2012, of 15 October, which is now intended to be revoked.

4. Pursuant to the preamble, it is appropriate to carry out a review of these rules, aligning them with the most recent European regulatory framework and with the practices in use in the Eurosystem, pursuing, among others, the objective of protecting the integrity of banknotes euro as a means of payment without forgetting the technological evolution that has taken place in the meantime, which allows for greater dematerialization of processes.

5. Thus, the project regulates the terms under which the withholding must be carried out for the purposes provided for in article 8 of the Organic Law of the Bank of Portugal, approved by Law No. 5/98 of 31 October, last amended by Law No. 73/2020, of November 17, and Articles 4 of Decree-Law No. 184/2017, of May 10, and Decree-Law No. 195/2007, of May 15 .

6. Article 4 establishes the duty to retain counterfeit or suspected counterfeit banknotes and coins presented to the entities listed in article 2, which must be removed and sent to the competent authorities, as defined in articles 9. and 10th, within a maximum period of 10 working days.

7. In turn, article 6 provides that the entities to which this Instruction is addressed must ensure that the retention of banknotes and coins is mandatorily accompanied by the collection of the information contained in Annex I, including those relating to the identification of the Presenter: full name,

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

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identification document, identification document number, email, telephone contact, address, postal code, parish, account holder (name), cardholder (if different from the account holder), account number (IBAN). This information must be communicated to Banco de Portugal through a dedicated service on the restricted access portal BPnet, which includes online data collection through the SIN application.

8. The processing of personal data in question is based on legal obligations arising from the joint reading of Articles 8(1) of the Organic Law of Banco de Portugal and 4 of Decree-Law No. 195/2007, of 15 May, in accordance with European Union Law, finding a legal basis under the terms of Article 6(1)(c) of the GDPR.

9. As for the categories of personal data being processed, which are listed in point II (Identification of the Submitter) of Annex I, the CNPD considers them appropriate and necessary for the purposes envisaged, in compliance with the principle of data minimization enshrined in subparagraph c) of Article 5(1) of the GDPR.

10. Note that point 3 of Annex II provides that "In order to ensure the success of matters relating to the prevention and prosecution of the crimes of counterfeiting cash, your data will be made available to the Judicial Police¹ and eventually to the National Bank of Belgium , through the CashSPP system, managed by this institution. It should be noted that the data

submitted in this system is anonymized».

11. It should be noted that if data capable of identifying the holder is submitted, as an exception, he must be informed of this.

12. Just a brief note regarding the fulfillment of the right to information regarding the processing of personal data, which is attached to the Instruction Project. Since the processing of personal data is based on legal obligations, not being based directly on the exercise of public interest functions by Banco de Portugal (cf. Article 21(1) of the GDPR), nor on the consent of the holders of the data (cf. Article 7(3) of the GDPR), the CNPD believes that the reference, in point 5.1., to the right to object to the processing and the right to withdraw consent is meaningless.

13. Therefore, for the sake of clarity in terms of data processing, the CNPD recommends reviewing point 5.1., as well as point 5.2. (this one, in the part where the right of opposition is mentioned).

III. Conclusion

14. On the grounds set out above, the CNPD considers that the processing of personal data provided for in the Draft Instruction does not give rise to reservations from the point of view of the legal regime of data protection,

1 Pursuant to article 10 of the Draft Instruction.

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CNPD

National Data Protection Commission

recommending only the revision of point 5 of annex II regarding the fulfillment of the right to information, in the terms explained above, in points 12 and 13.

Approved at the session of June 29, 2021

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Filipa Calvão (President)

Av. D. Carlos 1,134,10 1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpcl.pt

www.cnpd.pt