

I. Order

1. Banco de Portugal asked the National Data Protection Commission (CNPD) to issue an opinion on the draft Notice that regulates the elements and information that must be communicated to Banco de Portugal within the scope of the procedures relating to the acquisition, increase or decrease of qualifying holdings under the terms and for the purposes of the General Regime for Credit Institutions and Financial Companies and the Legal Framework for Payment Services and Electronic Currency and which revokes Notice no. .

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. Pursuant to paragraph 4 of article 102 of the General Regime for Credit Institutions and Financial Companies (RGICSF), approved by Decree-Law no. establish, by notice, the elements and information that must accompany the prior communication of the acquisition or increase of a qualified holding regulated in that regime.

4. In turn, Article 38 of the RJSPME establishes the duty of any natural or legal person who intends to acquire, increase or reduce a qualifying holding in a payment institution or in an electronic money institution to notify Banco de Portugal in advance of its intention and provide it with the relevant information referred to in paragraph 4 of article 102 of the RGICSF.

5. On 1 October 2017, the Joint Guidelines of the European Supervisory Authorities on the prudential assessment of acquisitions and increases in qualifying holdings in financial sector entities came into force, clarifying the procedural rules and

criteria for the assessment prudential approach to acquisitions and increases in qualifying holdings in financial sector entities.

6. Therefore, under the terms of the preamble, it is necessary to update the regime provided for in Notice no. 5/2010 of the Bank of Portugal, taking into account the new legal and regulatory context, in particular the provisions of

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Joint Guidelines, as well as clarifying the requirements currently considered within the scope of this type of process by the supervisor, also taking into account the most recent requirements in terms of prevention of money laundering and terrorist financing. Thus, the draft notice under analysis implements these changes and revokes Notice from Banco de Portugal no. 5/2010 of 3 December.

7. The purpose of the Notice is, under the terms of article 1 of the project, to establish the elements and information that must be communicated to Banco de Portugal within the scope of the procedures relating to the acquisition, increase or decrease of qualifying holdings under the terms and for the effects of RGICSF and RJSPME.

8. Within the scope of communications to Banco de Portugal, the prior communication of the acquisition and increase in qualifying holding projects must be accompanied by the general information on the proposed acquirer provided for in Annex I.

9. Now, Annex I concerns general information about the proposed acquirer as a natural person, regarding personal information, professional experience and academic qualifications, suitability, financial information, conflicts of interest (here including the description of interests or financial relationships and non-financial and close or family relationships of the proposed acquirer with current shareholders, persons authorized to exercise voting rights, members of the management and supervisory bodies or senior managers of the institution object of the proposed acquisition).

10. In turn, when a legal person, the information respects the identification and activities, corporate structure (including

identification of all shareholders who acquire a qualified, direct and indirect holding, identification of the individuals who, ultimately, hold the ownership or control of the proposed acquirer/or on whose behalf the acquisition is carried out, in accordance with the criteria established in paragraph 1(h) of article 2 and article 30 of Law No. 83/2017 , of August 18, being considered beneficial owners of the proposed acquirer). It also includes the identification and professional qualification of the members of the management body of the proposed acquirer, information regarding the suitability of the proposed acquirer, the members of the management body that direct its activities and any company controlled by it, financial information, conflict of interest . It also includes information on the acquisition and on its financing. Finally, the identification and contact details of the contact person of the proposed acquirer, with the authorization of the holder of the data provided.

11. The processing of this personal data is appropriate and necessary for the exercise of supervisory powers by Banco de Portugal, in compliance with the principle of data minimization enshrined in Article 5(1)(c) of the GDPR.

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12. It should be noted that the prior notification of the acquisition and increase in qualified holding projects must also be accompanied by a criminal record certificate from the proposed acquirer as well as from the members of the proposed acquirer's management body. However, such elements are necessary as Banco de Portugal assesses the competence and suitability of the members of the management and supervisory bodies of financial entities, and must take into account, under the terms of subparagraph b) of paragraph 5 of article 30. °-D of the RGICSF «the accusation, indictment or conviction, in Portugal or abroad, for crimes against property, crimes of forgery and forgery, crimes against the realization of justice, crimes committed in the exercise of public functions, tax crimes , crimes especially related to the exercise of financial and insurance activities and the use of means of payment and even crimes provided for in the Commercial Companies Code».

13. In turn, article 86 of Law no. 83/2017, of 18 August, grants Banco de Portugal exclusive competence for the supervision of financial entities, as provided in paragraph 5 of article 111. ° criteria for this assessment, among which the conviction, with final judgment, for the practice of a crime punishable with a prison sentence of more than 6 months. Thus, as the processing of personal data related to criminal convictions and offences is at stake, its legal basis lies in Article 111(5) of Law No. 83/2017, of 18 August, which provides for guarantees appropriate for the rights and freedoms of data subjects, in accordance with

Article 10 of the R6PD.

14. A note only regarding Annex I under analysis, which in point 1.3, concerning the proposed acquirer, and in point 3.3, regarding the members of the management body of the proposed acquirer, provides "If they so wish, they may send a simple photocopy of the document identification card that contains your signature and tax identification number (citizen's card, identity card, passport or equivalent document) in order to avoid any need for face-to-face identification".

15. The CNPD expresses, once again¹, the reservations that the copy of the identification document raises regarding the value of the proof of identity, since the digitization of an identification document is easily manipulated, thus not guaranteeing the veracity of the data, in disregard of the principles of accuracy and completeness of personal data enshrined in points d) and f) of paragraph 1 of article 5 of the GDPR.

16. All the more so, that under the terms of paragraph 2 of article 2 of the Project (General elements for the instruction of the procedures of prior communication of acquisition or increase of qualifying holding) the

¹ See Opinion No. 3172017, of May 17, 2017, available at

[https://www.cnpd.pt/bin/decisoes/Par/40 31 2017.pdf](https://www.cnpd.pt/bin/decisoes/Par/40%2031%202017.pdf) and also Opinion No. 142/2020, of December 3, 2020 available at

[https://www.cnpd.pt/decisoes /decision history/?year==2020&type=4&ent=](https://www.cnpd.pt/decisoes/decision%20history/?year==2020&type=4&ent=)

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communications must be accompanied by declarations prepared in accordance with the model in Annex III, signed in accordance with the respective identification document accompanied by a certified photocopy of the respective identification document that contains the signature and the civil identification number. However, if a certified photocopy of the identification document is required here, the above mentioned option in points 1.3 and 3.3 of Annex I is hardly understood.

17. It is reaffirmed that the simple copy of the identification documents constitutes a document without any probative legal value, precisely because of its ease of handling, so it is recommended to review points 1.3 and 3.3 of Annex I.

18. In turn, Annex II - Additional information related to the qualifying holding that is intended to be acquired - provides that, in the case of a qualifying holding with change of control or establishment of a domain relationship with the institution object of acquisition, the proposed acquirer must provide the elements relating to the impact of the acquisition on the governance system of the entity object of the acquisition proposal, specifying for each person to be designated as a result of the acquisition, the elements relating to their suitability, professional qualifications, independence and availability provided for in Instruction no. No. 23/2018. Thus, in relation to the data described in Annex II, Banco de Portugal needs this information for the exercise of its supervisory powers, so its treatment is lawful in Article 6(1)(e) of the GDPR .

19. As a final note, it should be noted that Annex IV substantiates the data subjects' right to information, provided for in Articles 13 and 14 of the GDPR. Notice no. 5/2010 of the Bank of Portugal, which is now revoked, was silent on this matter, so the express consecration of this right is marked as very positive, contributing to the transparency of the treatment. Here, the information regarding the person responsible for the processing of personal data, the basis and purpose of the same, categories of personal data and their origin, data retention period, recipients, lack of automated individual decisions, rights of data subjects, contacts and form of complaint. The information set out in Annex IV is adequate to fulfill the purposes in question, in compliance with the principle of data minimization provided for in Article 6(1)(c) of the GDPR.

III. Conclusion.

20. The analysis of the draft Notice of Banco de Portugal 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 reformulation of point 1.3 (General information on the proposed acquirer) and 3.3 (Identification and professional qualification of the members of the management body of the proposed acquirer) of Annex I to the Draft Notice, in the relative part

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the presentation of a simple photocopy of the identification document of the proposed singular acquirer or of the members of

the management body who effectively manage the activities of the proposed acquirer, favoring other forms of proof of identity.

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