

## I. Order

1.0 Banco de Portugal asked the National Data Protection Commission (CNPD) to issue an opinion on the Draft Notice on the prevention of money laundering and terrorist financing, with which Notice no. /2018, of September 26, and Instruction No. 2/2021, of February 26.

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, 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

3. Banco de Portugal submits for an opinion a Draft Notice on the prevention of money laundering and terrorist financing, to be issued in accordance with the regulatory power conferred by article 94 of Law No. 83/2017, of 18 December August, which establishes preventive and repressive measures to combat money laundering and terrorist financing, by article 27 of Law no. by the United Nations or the European Union and establishes the sanctioning regime applicable to the violation of these measures, and by articles 30-B and 33-A of the General Regime for Credit Institutions and Financial Companies, approved by Decree-Law No. 298/92, of December 31 (RGICSF).

4. Law No. 58/2020, of 31 August, which transposed into the domestic legal order the revision promoted by Directive (EU) 2018/843 to Directive (EU) 2015/849, amended, among other diplomas, the Law No. 83/2017, of August 18.

5. Therefore, under the terms of the Explanatory Note of the public consultation of this Project, it is necessary to carry out a review of Notice no. be provided for in Law no. 83/2017, update the rules that refer to diplomas already revoked, referring them

to the current law, make the regime compatible with the provisions of Bank of Portugal Notice no. July, which regulates internal governance systems and defines the minimum standards on which the organizational culture of entities subject to supervision by Banco de Portugal must be based. O

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Draft Notice also incorporates the regime resulting from Bank of Portugal Instruction No. 2/2021, of 26 February, condensing in a single regulatory diploma the rules applicable to the prevention of money laundering and terrorist financing.

6. Pursuant to article 1 of the Project, the Notice regulates the conditions of exercise, procedures, instruments, mechanisms, application formalities, obligations to provide information and other aspects necessary to ensure compliance with the duties to prevent money laundering and terrorist financing, within the scope of the activity of financial entities subject to the supervision of the Bank of Portugal, the means and mechanisms necessary for financial entities to comply with the duties provided for in Law No. 97/2017 , of 23 August, as well as the measures that payment service providers adopt to detect transfers of funds in which the information on the payer or the beneficiary is missing or incomplete, the implementation of which, by the obliged institutions, will lead to data processing personal.

7. In fact, the Project includes provisions that call for the processing of identification data of customers and representatives, of the holders of shares in the capital and in the voting rights of an amount equal to or greater than 5%, and of the holders of the management body or equivalent body and other relevant senior management with management powers, beneficial owners, close family members and persons recognized as closely associated

8. Thus, Article 13, under the heading 'Procedures and centralized register relating to occasional transactions', provides that financial entities implement a computerized and centralized register of all occasional transactions carried out, ensuring that the register contains at least , the date and value of the transaction, as well as the name or full name and the type and number of the customer's identification document. Article 14 also stipulates that financial institutions also implement a computerized and centralized register of cash deposits made by third parties in accounts held by customers.

9. On the other hand, Article 20, relating to identifying elements of customers and representatives, provides in paragraph 3 that

in cases where individual entrepreneurs do not have a legal person identification number, national or foreign , financial entities collect and register the tax identification number of the natural person used. Article 21(2) also provides that financial entities collect and register the following identifying elements referring to the holders of shares in the capital and voting rights of a value equal to or greater than 5%, and to the holders of the administration or equivalent body and other relevant senior staff with management powers: a) When they are natural persons: i) Name

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complete; ii) Date of birth; iii) Nationality contained in the identification document; iv) Type, number, expiry date and issuing entity of the identification document; v) Tax identification number or, when they do not have a tax identification number, the equivalent number issued by a competent foreign authority.

10. As for beneficial owners, article 22 provides that the documentation or records formalizing the identification and due diligence process must contain specific information fields intended to identify the beneficial owners on whose behalf the customers are acting or who , ultimately, control the clients when they are legal persons or centers of collective interests without legal personality.

11. Also, under the terms of article 32 of the Project, in the contracting of payment initiation and account information services referred to in paragraphs g) and h) of article 4 of the Legal Regime for the Services of Payment and Electronic Currency, financial entities collect and register the full name or name of the customer, their representatives and beneficial owners, and also the following identifying elements when they are natural persons: type, number, expiration date and issuing entity of the identification document; or tax identification number or, when they do not have a tax identification number, the equivalent number issued by a competent foreign authority.

12. Finally, Article 35 considers, as an example of concrete measures to obtain additional information about customers, their representatives or beneficial owners, the collection of information on their reputation, close family members and recognized persons. as closely associated.

13. 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)(cj) of the GDPR.

14. It should be noted that the aforementioned data processing is based on lawfulness in Article 6(1)(c) of the GDPR, as they derive from legal obligations provided for in Law No. 83/2017, of 18 August, and in the RGICSF, approved by Decree-Law no. 298/92, of 31 December, with the Bank of Portugal responsible for its regulation.

15. From the point of view of the protection of personal data, among the changes promoted in the text of the Draft Notice, in view of the provisions of Notice no. qualified providers of trust services under the terms of Regulation (EU) No 910/2014.

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16. And the regulation, as an alternative procedure for proving identity, of videoconferencing in Annex I of the Notice, under paragraph 6 of article 21, for the purposes of the provisions of subparagraph i) of subparagraph c) of paragraph 4 of article 25 of Law No. 83/2017, of 18 August.

17. In this regard, the CNPD limits itself to pointing out the need to fully comply with the content of Order No. 157/2017 of the National Security Office<sup>1</sup>, with regard to the requirements to be observed during the videoconference, which must also the right of access under the terms foreseen to the personal data by the holders, under the terms provided for in paragraph 1 of article 50 of Law No. 83/2017.

### III. Conclusion

18. The draft Notice of Banco de Portugal does not raise new issues from the point of view of the protection of personal data, the CNPD indicating only the recommendations indicated above, in point 17.

Approved at the March 2, 2022 meeting

Filipa Calvão (President)

<sup>1</sup> Cf. <https://www.gns.gov.Dt/media/10442/Despacho-154-2017-ID-Videoconferencia.pdf>