

PAR/2021/7

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CNPD

National Data Protection Commission

OPINION/2021/15

Request

1. Banco de Portugal asked the National Data Protection Commission (CNPD) to comment on the preliminary draft Instruction that partially amends Instructions No. 7/2016, of 20 May, and 23/2018, of 5 May November, and incorporates the European Central Bank's Information Management System (IMAS Portal) into the internal legal system.
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 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, Article 4(2) and Article 6(1)(a), all of Law No. 58/ 2019, of 8 August, which implements the GDPR in the domestic legal order.
3. The present draft Instruction "partly amends the Instruction of Banco de Portugal no. of institutions subject to the supervision of the European Central Bank (ECB) within the scope of the Single Supervisory Mechanism, as well as the Instruction of Banco de Portugal no. the ECB Information Management System Portal - ISMAS Portal", which allows the submission, consultation and exchange of information between supervisory authorities and entities directly supervised by the ECB. It should be noted that with the Single Supervisory Mechanism, some national credit institutions are now directly or indirectly supervised by the ECB in terms of authorization to exercise functions as a member of the bodies s of administration and supervision.
- 4, Under the preamble, the use of Portal IMAS is, at this stage, limited to requests for authorization for the exercise of functions by members of the management and supervisory bodies and for the exercise of essential control functions of Significant Institutions classified in accordance with Regulation (EU) No. 468/ 2014 of the ECB of 16 April 2014 (see Article 5

of the Preliminary Draft). The aforementioned authorization requests must be submitted through the IMAS Portal and accompanied by the elements identified in paragraphs b) to f) of paragraph 1, paragraphs 2 and 3 of article 2 of Instruction no. , which must be submitted together with the completion of the Online form available on the IMAS Portal, in addition to the declarations in Annex I and II.

Analysis

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

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt

PAR/2021/7

1v.

A declaration of compliance with the duty of information regarding the processing of personal data collected by Banco de Portugal must also be submitted, which corresponds to the declaration contained in point 2 of the questionnaire on suitability, professional qualifications, availability, independence and conflicts of interest, annexed to the Instruction No. 23/2018 - cf. Article 6(3)(iii).

5. The Draft Draft also amends the declaration in order to comply with Banco de Portugal's duty to provide information, which is currently included in point 2 of the questionnaire on suitability, professional qualifications, independence and availability, annexed to Instruction No. 23/2018. Thus, the data subject is communicated, in compliance with the provisions of Articles 12 to 14 of the GDPR, the following information: responsible for the treatment, grounds of lawfulness and purpose thereof, categories of personal data, retention period, communication of data and international transfers, rights of data subjects, EPD contact and right to complain to the CNPD.

6. Such information is necessary to ensure equitable and transparent treatment, so the CNPD marks the amendment of Instruction No. 23/2018 on this point as positive. It should be noted, however, that with regard to the categories of personal data, despite the effort made to implement it, the Annex provides that "The list indicated is not exhaustive. For additional information contact us through the person in charge, protection. dataia)bpportuaal.Dt».

7. The suitability and necessity of the categories of data indicated for the purposes of assessing the suitability of the members of the management and supervisory bodies, as well as the holders of essential functions in credit institutions, provided for in articles 30, 30. -A and 33-A, no. 3, of the General Regime for Credit Institutions and Financial Companies (RGICSF), the CNPD only points out that, in compliance with the principle of data minimization enshrined in paragraph c) of no. According to Article 5(1) of the GDPR, a more exhaustive indication of the categories of data required would be appropriate, with a view to promoting greater certainty as to the scope and purpose of the processing of personal data.

8. On the other hand, subparagraph h) provides that "the exercise of rights may be subject to limitations that will be justified, on a case-by-case basis, after weighing the public interest pursued by the Bank (and the ECB) in the specific case".

9. Not considering the possibility that the rights provided for in Articles 15 to 22 of the GDPR may be limited, this hypothesis is admissible with regard to the rights of erasure and opposition, in accordance with Articles 17 and 21 of the GDPR, and for the others, it can only result from an express provision in Union or Member State law (in accordance with Article 23(1) of the GDPR), provided that such limitation respects the essential content of the rights and fundamental freedoms and constitutes a necessary and proportionate measure in a democratic society to ensure the ends described there, and not, as appears from the articles,

PAR/2021/7

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National Data Protection Commission

remain at the disposal of the person responsible for the treatment. Such legislative measures must include explicit provisions concerning, among others, the categories of personal data, the scope of the limitations imposed, the specific risks to the rights and freedoms of data subjects and the right to be informed about the limitation, in accordance with the provided for in Article 23(2) of the GDPR.

10. Therefore, it is recommended to reformulate the aforementioned paragraph h) in order to clarify the process of possible limitation of the exercise of rights of data subjects, in accordance with the provisions of articles 15 to 22 and in article 23. ° of the GDPR.

11. Finally, a note on the exercise of rights covered by point h), which provides that the exercise of the right of rectification is

exercised in accordance with Article 3(3) of Instruction No. 23/2018 and the remaining rights are exercised by requesting the Data Protection Officer of Banco de Portugal. Notwithstanding the importance of rectifying information that may affect the suitability requirements for the performance of functions, it will always be said that, under the terms of Article 12(2) of the GDPR, it is up to the controller to facilitate the exercise of the rights of data subjects under Articles 15 to 22, so that, in the abstract, there should not be different paths for exercising these rights if this results in harm to data subjects.

III. Conclusion

12. On the grounds set out above, the CNPD recommends the reformulation of item h) of Annex I - amendment of Instruction No. 23/2018, of 5 November - Declaration for compliance with the duty of information, in order to clarify any limitation the exercise of data subjects' rights.

Approved at the plenary session of January 26, 2021

Filipa Calvão (President)

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

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt