

## I. Order

1. The Securities Market Commission (hereinafter referred to as CMVM) submitted to the National Data Protection Commission (hereinafter, CNPD), for an opinion, the draft Regulation on the reporting of information by the Securities Centers regarding settlement failures .

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 Article 7(1) of Regulation (EU) No. 909/2014, of the European Parliament and of the Council, of 23 July 2014, on improving the settlement of securities in the European Union and the Central Securities Exchange (hereinafter, CSDR) the Central Securities Depository must establish, for each securities settlement system that they manage, a system that controls the failures in the settlement of the financial instruments referred to in paragraph Article 5(1) of the CSSR.

4. In turn, Article 14 of Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018, which complements Regulation (EU) No 909/2014, of the European Parliament and of the Council , defines that the Securities Centers (hereinafter CSD) must submit periodic, monthly and annual reports to the CMVM, with the number of settlement failures and information about them, as well as other relevant information including the measures planned to improve the efficiency of the sale off. Subsequently, the CMVM will communicate this information to the European Securities and Markets Authority (ESMA) pursuant to Article 7(1) of the CSDR.

5. With the application in Portugal, as of February 1, 2022, of the Commission's Delegated Regulation (EU) No. 2018/1229, it becomes necessary to complement the European regulation, in order to operationalize communications between the CMVM and CSDs, in particular the format of the file to be sent with data on settlement failures, pursuant to Article 7(1) of Regulation (EU) No. 909/2014, and Annexes I and II of Delegated Regulation (EU) 2018/1229, so that they can, from that date onwards, report the number of settlement failures, as well as other information

Av. D. Carlos 1,134.1o T (+351) 213 928 400 [gerai@cnpd.pt](mailto:gerai@cnpd.pt)

1200-651 Lisbon F (+351) 213 976 832 [www.cnpd.pt](http://www.cnpd.pt)

PAR/2022/7 1 v.

including measures envisaged by CSDs and their participants to improve settlement efficiency.

6. Note that Annexes I and II of Delegated Regulation (EU) 2018/1229, in paragraphs 7 to 10, provide, respectively, for the processing of the following personal data: name, position, telephone number and address of email of the person responsible for the communication sent by the CSD. Such data are necessary for the purpose of the processing in compliance with the principle of data minimization provided for in points b) and c) of paragraph 1 of article 5 of the GDPR. The legal basis therefore resides in the fulfillment of a legal obligation under the terms of Article 6(1)(c) of the GDPR.

7. This draft regulation aims to define the form and content of the monthly and annual communication to the CMVM, by the Securities Centers, of information regarding settlement failures.

8. Thus, article 2 of the project provides that communications are provided through access to the CMVM's extranet domain, by sending a computer file prepared in accordance with the content and form rules contained in Annex 1, and must the Securities Exchanges validate that the information was duly submitted and accepted without errors. These entities must obtain the necessary information to fulfill their reporting duties to the CMVM, including the reporting code assigned by the CMVM and access permissions to the CMVM file transfer system as set out in CMVM Regulation No. 3/2016.

9. As for the technical specifications regarding the format of the file to be sent with the data on settlement failures, contained in Annex 1 of the draft regulation, the CNPD has nothing to observe.

10. However, the CNPD cannot fail to point out the lack of provision in the project for essential elements of the processing of personal data resulting from its application, in particular the data retention period and the security measures to be adopted.

III. Conclusion

11. Under the terms and on the grounds set out, the CNPD recommends the definition of a period for the retention of personal data and the security measures to be adopted.

Approved at the session of January 19, 2022

Filipa Calvão (President)