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J&L NATIONAL DATA PROTECTION COMMISSION

AUTHORIZATION/2019/1

I. Order

The Securities Market Commission (CMVM) has submitted the authorization of the National Data Protection Commission (CNPd), pursuant to paragraph b) of paragraph 3 of article 46 of the General Regulation on Data Protection (RGPD)¹, a draft Administrative Agreement, with a view to framing the international transfers of personal data between the CMVM and the financial supervisory authorities, their counterparts, from countries outside the European Economic Area (EEA).

This is a multilateral agreement that aims to provide a legal framework, from the point of view of the legal regime for the protection of personal data, to international transfers of data carried out between the EEA financial supervisory authorities and their counterparts located outside the EEA, in the absence of an adequacy decision from the European Commission, in accordance with Article 45(3) of the GDPR.

This agreement was negotiated between the European Markets and Securities Authority (ESMA) and the International Organization of Securities Commissions (IOSCO), and the negotiation process was monitored by the Union's national data protection authorities, meeting in the Article 29 Working Group, and, this past year, in the European Data Protection Committee (Committee).

The project under consideration was transmitted on January 2 of this year to the Chairperson of the Committee, who took the initiative of submitting it to the opinion of that body, under the terms of paragraph 2 of article 64 of the RGPD, having approved the Opinion 4/2019, of February 12, 2019².

The CNPD, as a member of the Article 29 WG and now of the Committee, closely followed the negotiations and participated in the work related to the adjustment of the agreement to the GDPR regime, taking in particular the jurisprudence of the Court of Justice of the European Union

1 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and the free movement of such data and repealing Directive 95/46 /CE (OJ L 119 of 5.4.2016).

2 <https://edDb.europa.eu/our-work-tools/our-documents/stanovisko-sboru-clanek-64/opinion-42019-draft-administrative> en Av. D. Carlos I, 134-1

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Process AAD/2019/1 1v.

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as to what should constitute adequate guarantees to effect an international transfer of personal data.

Thus, in the absence of an adequacy decision from the European Commission, data controllers can only transfer personal data to a third country or an international organization if they have presented adequate guarantees, and on condition that the data subjects enjoy enforceable rights and effective corrective legal measures. Such guarantees can be provided for by means of provisions to be included in administrative agreements between public authorities or bodies, which contemplate the effective and enforceable rights of data subjects, subject to authorization by the competent supervisory authority, in this case the CNPD (Cf. Article 46(1) and (3)(b) GDPR).

II. appreciation

The CMVM, as the competent national authority for the purpose of supervising the securities market, is entitled to be a party to this Administrative Agreement (AA), which aims to ensure efficient international cooperation between public authorities, regulators and/or supervisory authorities of securities and/or derivatives markets, in order to safeguard investors or consumers and promote the integrity of these markets and confidence in them.

Attached to the agreement are the list of EEA authorities and the list of authorities outside the EEA that constitute the Parties to the Agreement, respectively, the exporters and importers of personal data, with the AA applicable to the transfer between each of the authorities.

As for the guarantees included in the AA, whose section II lists a set of definitions, most of which stem from the GDPR, the following stand out: 1

1. Purpose limitation

Regardless of the request received, the CMVM may only transfer data within the framework of its specific mandate and responsibility; likewise, authorities outside the EEA will not be able to process the data received for purposes incompatible with those determined by their

Process AAD/2019/1 2

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attributions and competencies. A periodic assessment of compliance with this principle set out in Article 5(1)(b) of the GDPR (Section III(1) and Section IV(1) of the AA) is foreseen.

2. Data accuracy and minimization

The transmitting authority must ensure that the data transferred are accurate and current, being obliged to transfer only adequate, relevant and necessary data for the purpose of the transfer. It is also bound to ensure that inaccurate data are rectified or deleted, and must communicate this fact to the authority receiving the data (Section III, no. 2, of the AA). The Agreement thus mirrors the principles set out in Article 5(1)(b) and c) of the GDPR.

3. Transparency

Each authority will publish on its website, alongside the text of the AA, an information note on the processing of personal data, the recipients of the data, the rights of the data subjects and contact information for submitting complaints. Provision is also made for the obligation to inform data subjects individually, in accordance with the requirements of the RGPD, in compliance with articles 13 and 14.

4. Limitation of data retention

The principle set out in Article 5(1)(e) of the GDPR is set out in Section III(7) of the AA, which provides that transferred data are only kept for the period strictly necessary to the fulfillment of the purpose in question, in accordance with the requirements of applicable legislation.

5. Security and confidentiality measures

Authorities outside the EEA are expected to adopt technical and organizational measures that guarantee adequate security of personal data, namely through marks that identify the information as personal data and restrictions on access to data. if they have

Process AAD/2019/1 2v.

knowledge of a personal data breach, the receiving authority must inform the transmitting authority as soon as possible, adopting appropriate and reasonable means to remedy the breach and mitigate potential adverse effects (Section III, paragraph 4, of the AA). This point transposes the principle set out in Article 5(1)(f) of the GDPR.

6. Rights of holders

The AA provides in Section III, no. 5, the exercise of the right of access, correction, elimination, limitation and opposition, and information must be published on the website of the signatory authorities on how to exercise these rights, in order to allow its effectiveness. In addition to confirming the transfer with the authority transmitting the data, it is also possible to exercise the remaining rights either with the competent national authority or with the receiving authority. Any possible restriction on the exercise of rights must be provided for by law and is applicable to the extent necessary to comply with legal obligations. Also in this aspect, periodic evaluations are planned through the AA supervision mechanism. In this way, the rights provided for in articles 15 to 19 and 21 of the RGPD become effective.

7. Onward transfers

Onward transfers to third parties that are not party to the AA and to third countries not covered by an adequacy decision of the European Commission will only be allowed if there is prior written authorization from the transmitting authority and if the third parties offer adequate guarantees in accordance with the safeguards contained in the AA. The same requirements apply if you want to share data with third parties in the same country as the receiving authority. If these third parties cannot provide the aforementioned guarantees, the data can only be transferred if sharing is necessary for important reasons of public interest, which must be recognized by Portuguese or Union law; or if the purpose of the sharing is in accordance with the one that initially motivated the transfer and if such sharing is necessary to fulfill the attributions and powers of the receiving authority and/or the third party; or if such sharing is ordered by a decision with binding force or otherwise legally required, in which case the transmitting authority must be previously notified.

Process AAD/2019/1 3

NATIONAL COMMISSION

- DATA PROTECTION

These AA safeguards thus reflect the general principle of international transfers, set out in Article 44 of the GDPR.

8. Appeal and oversight mechanisms

The AA provides for an appeal mechanism (Section III, paragraph 8) in order to guarantee data subjects the right to obtain redress and, where appropriate, compensation. The appeal can be brought before a competent body (eg a court) in the country where the violation occurred. The transmitting authority will be informed of any dispute or claim. A four-step mechanism can also be used: amicable resolution, non-binding dispute mediation, alternative dispute resolution and suspension of data transfer.

Section IV of the AA provides for an oversight mechanism to ensure the proper execution of the agreement. IOSCO's internal oversight body will function as an 'assessment group', which will periodically assess compliance with the AA and make recommendations to the signatory authorities. This mechanism will be combined with the authorities' own internal assessments, the results of which must be reported to the 'assessment group'.

9. Review and interruption

Section V of the AA provides that the authorities may, by mutual agreement, review the terms of this agreement in the event of substantial legal changes that affect its operation. It is also provided that each authority may, at any time, interrupt its participation in the AA in relation to another authority or authorities, and must notify them of its intention 30 days in advance. Data already transferred will continue to apply the safeguards provided by the AA.

III. Decision

In conclusion, given the data protection requirements set out above and the favorable opinion of the European Data Protection Committee, the CNPD considers that the provisions of the

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Process AAD/2019/1 3v.

Administrative Agreement under consideration offer adequate guarantees in accordance with the

In this context, and in order to allow the CNPD to supervise the application of this Administrative Agreement, the CMVM must:

1. Keep duly documented all cases in which you provide prior consent for onward transfers of data and for sharing of data within the same country, as well as the respective appropriate guarantees provided. It must also have a list of prior notifications of exceptional cases of sharing personal data, without adequate guarantees, that it may receive;

2. Keep a record of complaints or disputes of which it is aware or in which it is involved, pursuant to Section III, no. 8, of the AA;

3. Send the results of its periodic internal evaluations to the CNPD, in accordance with Section IV of the AA;

4. Inform the CNPD of any suspension of the transfer of personal data, pursuant to Section III, no. 8, and Section IV, of the AA, as well as any modification or interruption of participation in this Administrative Agreement, in accordance with the Section V of the AA.

Thus, with the conditions set out above, under the combined provisions of Article 46(3)(b) and Article 58(3)(i), both of the GDPR, the CNPD resolves to authorize the Administrative Agreement that aims to frame international transfers of personal data between the CMVM and the financial supervisory authorities, their counterparts, from countries outside the European Economic Area (EEA).

Lisbon, May 6, 2019

GDPR

Filipa Calvão (President)