

National Data Protection Commission

OPINION/2023/37

I. Order

1. The Securities Market Commission (CMVM) asked the National Data Protection Commission (CNPd) to issue an opinion on the draft Regulation (Project) aimed at regulating the formats and means used to comply with disclosure duties of information to the CMVM by issuers of securities supervised by this authority (issuers) and revokes CMVM Regulation No. 1/2022, of 19 January.

2. An Impact Assessment on the Protection of Personal Data (AIPD) relating to the present CMVM regulation project and the CMVM Public Consultation Document No. 5/2023 has been attached.

3. The CNPD issues an opinion within the scope of its attributions and competences, as an independent administrative authority with authoritative powers to control the processing of personal data, conferred by paragraph c) of paragraph 1 of article 57, paragraph b) of paragraph 3 of article 58 and paragraph 4 of article 36, all of Regulation (EU) 2016/679, of April 27, 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 no. 58/2019, of 8 of August, which implements the GDPR in the internal legal order.

II. Analysis

4. Pursuant to article 62 of the Code of Administrative Procedure, approved by Decree-Law No. 4/2015, of January 7th, last amended by Decree-Law No. 11/2023, of February 10th and Article 357-A of the Securities Code, the CMVM intends to implement the CMVM's electronic one-stop-shop (BUE), through which all interactions between the CMVM and its supervisees will be mandatorily processed. Therefore, it is necessary to regulate the formats and means of compliance with the information obligations by issuers, so that, both on the supervisory side and on the side of the referred supervised entities, it is possible, from the launch date of a new electronic one-stop-shop, operationalization and maintenance of legally due reports.

5. Pursuant to paragraph 1 of article 2 of the Project, issuers disclose the legally required information in the CMVM's information dissemination system, by sending them to the CMVM via access to the CMVM's one-stop shop, in the terms set

out in Annex I to this regulation.

6. The Project contemplates the processing of personal data of the members of the management and supervisory bodies, the board of the general meeting, the statutory auditor, other managers, when they

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carry out obligatorily reportable transactions; of people closely related to managers, when they carry out obligatorily reportable transactions; and the representative with sufficient powers for relations with the market and the CMVM.

7. Although article 3 establishes the duty of reporting by issuers of information on the members of the corporate bodies, directors and representative for relations with the market and with the CMVM, through the BUE, it does not define the format of this report, nor does it densify the information that it should contain.

8. It should be noted that the attributes of the data subjects that are registered are described in the AIPD (full name, NIF, position/function exercised/mandate, academic title, complete address, e-mail, telephone, fax, personal relationships), but it does not identify where the list of listed attributes was taken from, given the lack of forecasting in the Regulation Project.

9. The CNPD recommends identifying in the article (in addition to article 3 or in Annex to the Project), the personal data of the managers subject to treatment that substantiate the information that must be reported about them. Otherwise, in these open terms, the CNPD cannot conclude that the data to be processed is proportional, as compliance with the provisions of Article 5(1)(c) of the RGPD is not ensured.

10. Just a note regarding the disclosure of reported information: under the terms of the AIPD, information of a more general nature is disclosed to the public, under legally imposed terms (via the CMVM's information dissemination system), while more detailed information relating to bodies social and market transactions remain within the exclusive sphere of the CMVM and are not subject to public disclosure.

11. The risk of communicating the personal data of members of governing bodies and directors is relativized, with reference to

the fact that they are published on the publications portal of the Ministry of Justice. However, this is not the case with the other representatives, so security measures appropriate to the risk of disclosure must be adopted.

12. In addition, the projected regime does not raise reservations from the perspective of its compliance with the legal regime of data protection, except for data conservation data, in relation to which the Project is silent. In fact, it is limited to mentioning in the preamble that they are kept in accordance with the principles of administrative interest and administrative utility, provided for in Decree-Law No. 16/93, of 23 January, that is, at least until the date on which the purpose for which it was collected expires, plus the limitation periods, namely administrative, tax or civil. After the applicable limitation periods or others imposed by law, personal data may still be retained for the purposes of definitive or historical archiving, under the terms of the aforementioned Decree-Law.

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13. Now, as already mentioned in Opinion No. 118/2022, approved on December 21, 2022, the CNPD does not discuss the public interest of the CMVM in the preservation of personal information - an interest that the aforementioned Decree-Law provides for -, but points out that, by referring this legal diploma to an administrative regulation (Regulatory Decree) the setting of conservation periods (cf. no. 2 of article 15 of Decree-Law no. 16/93), it cannot fail to be required also here, in the context of the processing of personal data carried out by the CMVM, the setting of deadlines for the conservation of personal data subject to processing, depending on the need to conserve such data for the intended purposes, under the terms of paragraph e) of paragraph Article 5(1) of the GDPR. Article 6(3) of the GDPR also points in this direction.

14. Thus, the CNPD recommends specifying the retention periods for personal data, not least because, under the terms of article 13 of the RGPD, the CMVM has a duty to provide information regarding the same to the data subjects (cf. Section a) Article 13(2) GDPR).

III. Conclusion

15. Essentially, the Draft Regulation does not raise reservations from the perspective of its compliance with the legal data protection regime, except for the aspects noted above, in points

16. Thus, the CNPD, under the terms and with the grounds set out above, recommends:

a) Densification of the personal data of the members of the governing bodies, directors and people closely related to directors, when they carry out transactions that are obligatorily reportable, and representative for relations with the market and with the CMVM, object of treatment; It is

b) Fixing in the Project's articles the retention periods for the personal data being processed.

Approved at the meeting on April 11, 2023

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