

I. Request

1. The Securities Market Commission (CMVM) asked the National Data Protection Commission (CNPD) to issue an opinion on the draft Regulation on covered, mortgage and public sector obligations.

2. An Impact Assessment on the Protection of Personal Data (AIPD) relating to the present draft regulation of the CMVM has been sent in annex.

3. The CNPD issues an opinion within the scope of its attributions and competences, as an independent administrative authority with authoritative powers for the control of 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 August 8, that implements the GDPR in the internal legal order.

II. Analysis

4. Decree-Law No. 31/2022, of May 6, which approves the Legal Framework for Covered Bonds and transposed Directive (EU) 2019/2162 of the European Parliament and of the Council of November 27, 2019 on the issuance of covered bonds and the public supervision of these bonds, assigned to the CMVM the authority to supervise all covered bond programs, as well as transferred to this entity the authority to supervise covered bond and public sector programs approved under Decree -Law No. 59/2006, of March 20, which was previously the responsibility of Banco de Portugal.

5. With the said attribution and transfer of powers to the CMVM, it becomes necessary to draw up a specific regulatory framework for the said programmes, replacing the one previously established by the Bank of Portugal.

6. Thus, this Draft Regulation regulates the instructional elements for the purposes of authorizing covered bond programs, the

criteria for legal or voluntary overcollateralisation, the obligations of issuers to inform the CMVM, the duties of conservatorship connected with the programs, the bondholders' common representative's right of access to information on the global guarantee, the means of sending and disclosing information on covered bond programs, the procedures for replacing the program's credit manager and the fee due for program authorization of mortgage obligations.

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7. Under the terms of the preamble, given the transfer to the CMVM of supervisory powers relating to mortgage bond and public sector programs approved under Decree-Law No. 59/2006, of March 20, it is also foreseen the regulatory framework that will replace that drawn up by Banco de Portugal, as provided for in Article 7(9) of the Decree-Law approving the Legal Framework for Covered Bonds.

8. Lastly, the draft regulation aims to amend CMVM Regulation No. 7/2003, on compensation for CMVM acts, in order to provide for the fee due for the authorization of covered bond programs. An exemption from the said authorization fee is also foreseen for those programs for which the approval of a base prospectus is simultaneously requested from the CMVM.

9. The Project, with regard to covered bond programs, includes the processing of personal data identifying the independent auditor and the members of the organizational unit responsible for monitoring the global guarantee, as well as for preparing the report on the global guarantee for the purposes covered bond program authorization; the members of the board of directors who signed the declaration of compliance with the requirements applicable to covered bond programs; the members of the management and employees assigned to the covered bond program, including qualifications and knowledge in matters of issuing and managing covered bonds; information on the structure of administration, monitoring, management and control of the global guarantee. With regard to mortgage bonds or public sector bonds programmes: Identification data of the members

of the board of directors who signed the declaration of compliance with the requirements applicable to mortgage bonds or public sector bonds programmes; and identification data of the independent auditor provided for in article 34 of Decree-Law no. 59/2006, of March 20th.

10. Under the terms of the AIPD, the processing of personal data relating to the persons referred to in the previous number may include the full name, position or function performed, curriculum data, contacts and others.

11. The CMVM needs to process the information in question in order to exercise the supervisory powers that are legally conferred on it in article 353 of the CVM, for which reason its treatment finds legal grounds in sub-paragraph e) of paragraph 1 of Article 6 of the GDPR.

12. The personal data being processed are necessary and adequate for the purpose of supervision exercised by the CMVM, in compliance with the principle of data minimization provided for in subparagraph c) of paragraph 1 of article 5 of the RGPD, with the exception of the reference to other data, the need for which, due to lack of specification, it is not possible for the CNPD to assess.

13. For its part, the AIPD identifies some elements relating to the processing of personal data, assessing risks and foreseeing mitigating measures.

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14. With regard to the sending of information by issuers, provided for in Article 9 of the Project, the AIPD observes that «there is a risk that the data may be altered or disclosed to third parties». It appears that there is no definition in the Draft Regulation or in the AIPD of internal access control to information sent and stored in the CMVM infrastructure, so the CNPD recommends that the articles define rules on internal access to the segregated folder where they are kept. data sent by issuers, in compliance with the need-to-know principle (unless such rules are defined in another document).

15. Still on access control, it should be noted that the Project is silent on the registration of accesses, in order to make it possible to know who accessed, what data and when, which is why it suggests the regulation of this point in the articles.

16. Furthermore, the projected regime does not raise reservations from the perspective of its compliance with the legal regime of data protection, except for the period of data retention, 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.

16. Now, as already mentioned in Opinion No. 118/2022, of December 21, 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, referring this legal diploma to 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 here, in the context of the processing of personal data carried out by the CMVM, the setting of deadlines for the conservation of the personal data being processed, depending on the need to conserve such data for the intended purposes, under the terms of paragraph e) of paragraph 1 of Article 5 of the GDPR. Article 6(3) of the GDPR also points in this direction.

17. Thus, the CNPD recommends specifying the retention periods of 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. paragraph a) of Article 13(2) of the GDPR).

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III. Conclusion

Essentially, the Draft Regulation does not raise reservations from the perspective of its compliance with the legal data protection regime. The CNPD, under the terms and on the grounds set out above, recommends:

a) The definition of the access policy to the information sent by the issuers, as well as the forecast of the respective

registration; It is

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

Approved at the meeting on March 14, 2023

Filipa Calvao (President)