

NATIONAL COMMISSION

: DATA PROTECTION

OPINION/2020/141

1. Order

The Bank of Portugal requested the National Data Protection Commission (CNPd) to comment on the draft Notice that aims to regulate the registration obligations of entities that carry out or intend to carry out activities with virtual assets (Project).

The request made and the present opinion fall within the attributions and powers of the CNPD, as the national authority for the control of the processing of personal data, in accordance with the provisions of subparagraph c) of paragraph 1 of article 57 and n. 4 of article 36 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of article 3. , in Article 4(2) and Article 6(1)(a), all of Law No. 58/2019, of August 8 (which aims to ensure the execution , in the domestic legal order, of the GDPR).

The assessment of the CNPD is limited to the rules that provide for or regulate the processing of personal data.

there appreciation

Law No. 58/2020, of 31 August, transposes Directive (EU) 2018/843 of the European Parliament and of the Council, of 30 May 2018, which amends Directive (EU) 2015/849 on prevention the use of the financial system for the purpose of money laundering or terrorist financing and Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering through criminal law<sup>1</sup> , amended Law No. 83/2017, of 18 August, which establishes measures to combat money laundering and the financing of terrorism. Pursuant to article 112-A of the aforementioned law, as amended, all entities that carry out activities with assets

!The CNPD gave its opinion in Opinion No. “ 2020/62t approved in the plenary session of June 10 on Draft Law No. Ie/XIV// (GOV) - Transposes Directive (EU) 2018/843 , of the European Parliament and of the Council, of 30 May 2018, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and Directive (EU) 2018/1673 of the European Parliament and of the Council, of 23 October 2018 on combating money laundering through criminal law. Available at [https://www.xnpd.pt/home/decisoes/Par/PAR\\_2020\\_62.pdf](https://www.xnpd.pt/home/decisoes/Par/PAR_2020_62.pdf)

virtual. Banco de Portugal is responsible for registering these entities and for verifying compliance with the applicable legal and regulatory provisions in terms of combating money laundering and the financing of terrorism, pursuant to paragraph 1 j) of article 89 83/2017, of 18 August, this draft Notice aims to regulate such registration obligations and also define the content of their identification and diligence measures.

Thus, under the terms of article 1, the Project aims to regulate the provisions of article no. 112-A of Law no. 83/2017, of 18 August, defining the terms of submission, with the Bank of Portugal, the registration request by entities that intend to carry out activities with virtual assets and requests for alteration of the elements subject to registration by entities that carry out activities with virtual assets.

Individuals, legal persons or entities equivalent to legal persons indicated in article 3 of the Project, submit an application for registration or change of registration with the Bank of Portugal, submitting, for this purpose, the notification model provided for in Annex I, duly completed and accompanied by all the documentary elements specified therein.

Annex I contains information on the person(s) responsible for the registration application (full name, title, telephone contact and e-mail address) on the representative(s) of the applicant entity (full name, title, e-mail address) and signature) and general information about the request and the entity to be registered (the entity already performs another profession or activity covered by this law and tax identification number, company contract, valid and updated criminal record certificate of the entity and also elements that certify the existence, in Portugal or abroad, of any judicial, administrative or administrative proceedings, in which the entity to be registered has been convicted, accused or in any way indicted for the practice of violations of the legal and regulatory rules that govern the performance of the entities provided for in articles 3 and 4 of the Law (or a duly signed declaration attesting, under oath of honor, the respective non-existence ance).

In addition to this general information, Annex I also includes specific information that must accompany the registration request: identification of the beneficial owners of the entity to be registered (full name of the natural persons who are beneficial owners of the entity to be registered, % of the shareholding held, nature of participation

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detained, usual address and nationality; identification of holders of shares or voting rights in the entity to be registered (full name of persons who, directly or indirectly, hold shares or voting rights equal to or greater than 10%, % of shareholding held, domicile and nationality; identification of the members of the management and supervisory bodies and of other persons occupying top management functions in the entity to be registered (full name, position, assigned area, address, nationality, e-mail address and telephone contact, curriculum vitae details of academic training and professional experience and certificates that show attendance and content of relevant courses or training.)).

Annex I also indicates the documentary and supporting elements that must accompany the request in relation to the natural persons who are the beneficial owners of the entity to be registered, to the holders of shares or voting rights in the entity to be registered and to the members of the management and supervisory bodies and other persons who occupy top management functions in the entity to be registered, including the addition of a simple photocopy of citizen cards or certified photocopy of passports or identification documents issued by a foreign public authority, which contain the respective signature and the identification number. clearly readable identification.

The CNPD has already commented on this legislative option in Opinion no. by reproduced.<sup>2</sup> It expresses, once again, the reservations that the copy of the identification document raises regarding the value of the proof of identity, since the digitization of an identification document is easily manipulated, thus not guaranteeing the veracity of the data, in disregard of the principles of accuracy and integrity of personal data enshrined in points d) and f) of paragraph 1 of article 5 of the GDPR. It should be noted that this Project is limited to reproducing subparagraph a) of paragraph 4 of article 25 of Law no. referred to, in an attempt to simplify procedures to the detriment of greater security in the protection of personal data. In addition, paragraph 4 of article 21 of Notice of the Bank of Portugal no.

<sup>2</sup> Available at [https://www,cnpd.pt/bm/deeisoos/Par/40\\_\\_3 I \\_2017.pdf](https://www,cnpd.pt/bm/deeisoos/Par/40__3 I _2017.pdf)

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also as means of proof of identifying elements of customers and representatives a wide range of means, not limited to the aforementioned option. It is therefore recommended that this article be reformulated in order to include means of proof of identifying elements that offer greater security.

In turn, for natural persons who are the beneficial owners of the entity to be registered and for members of the management

and supervisory bodies and other persons who occupy top management positions in the entity, Annex 1 provides for the addition of valid and updated criminal record certificates. that demonstrate the inexistence of convictions, in Portugal or abroad, with final judgment, for the practice of a crime punishable with a prison sentence of more than six months, considered relevant for the exercise of the functions; elements that attest to the existence of any investigations or criminal proceedings that have not become final, in Portugal or abroad, in which the commission of crimes is indicted, by the person indicated or by an entity in which he has exercised administrative or administrative functions. others from top management; of any legal, administrative or administrative proceedings, in which the indicated person, or entity in which he/she has exercised administrative or other top management functions, has been convicted, accused or in any way indicted for the practice of violations of the legal and regulatory rules that govern the activities of the entities; elements that attest that, in Portugal or abroad, a process or procedure has taken place or is in progress aimed at refusing, revoking, canceling or ceasing registration, authorization, admission or license to carry out a commercial, business or professional activity, by authority, professional order or body with similar functions, or dismissal from the exercise of a position by a public entity, aimed at the person indicated or any entity in which he has exercised functions and elements that attest that, in Portugal or abroad, it took place or there is an ongoing process or procedure aimed at prohibiting, by authority, professional order or body with similar functions, the person indicated to act in the capacity of administrator or manager of a legal person or equivalent or to perform functions therein. It should be noted that these supporting elements may be replaced by a duly signed declaration attesting, under oath of honor, the respective non-existence, the model of which is shown in Annex II.

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It should be noted that such elements are necessary as Banco de Portugal assesses competence and suitability<sup>3</sup> as a condition for granting and maintaining the registration of entities carrying out activities with virtual assets. For this assessment, Banco de Portugal must take into account the existence of a conviction, in Portugal or abroad, with a res judicata, for the practice of a crime punishable with a prison sentence of more than six months, considered relevant for the exercise of its functions, namely those provided for in article 111 (crime of money laundering, crime of harmful administration or active

corruption, crimes of forgery, crime of traffic of influence, declaration of insolvency by judicial declaration). Since the processing of personal data related to criminal convictions and offences is at issue, its legal basis lies in subparagraph f) of paragraph 5 of article 112-A of Law No. 37/2015, of 18 August , in the current wording, which provides adequate guarantees for the rights and freedoms of data subjects, in accordance with Article 10 of the GDPR

It should be noted that the submission of registration or change of registration requests is made by completing or uploading the electronic forms available on the website of the Bank of Portugal, and the means of proof and other documentary elements that must accompany the requests must be submitted in digital format and uploaded electronically to locations duly identified on the forms or on the aforementioned website - cfr. Article 7 of the Project.

### III. Conclusion

On the grounds set out above, the CNPD recommends the reformulation of paragraph 3 of article 7 in order to enshrine other means of proof of identification in addition to the simple copy of the original, in physical or electronic support, of the identification document.

Lisbon, December 3, 2020

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3 Cf. Article 111 of Law No. 37/2015, of August 18, in the current wording

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