

THE

NATIONAL DATA PROTECTION COMMISSION

OPINION/2020/15

Banco de Portugal asked the National Data Protection Commission (CNPd) to comment on the draft amending instruction that amends Instruction no. Capital and Financing of Terrorism information regarding the specific procedures to comply with Regulation (EU) 2015/847, of the European Parliament and of the Council, of 20 May 2015.

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 paragraph 2 of article 4 and in paragraph a) of paragraph 1 of article 6, all of Law no. , in the domestic legal order, of the GDPR).

In this draft Instruction, article 2 of Instruction no. Part 4 - Specific procedures to comply with Regulation (EU)) 2015/847.

The Annex to Instruction No. 5/2019 is therefore amended, with the addition of a new Part 4 entitled "Specific procedures to comply with Regulation (EU) 2015/847>> and with the renumbering of the Part entitled " Self-Assessment Questionnaire».

It is therefore necessary to analyze Part 4, now added, regarding the provisions that provide for or regulate the processing of personal data.

As mentioned above, this Part 4 concerns specific procedures aimed at complying with Regulation (EU) 2015/847. Three situations are distinguished here: I - transfers of funds in which, in the reference period, the financial institution has acted as payment service provider for the payer; II - transfers of funds in which, in the reference period, the financial entity has acted as a payment service provider for the beneficiary; and also, III - transfers of funds in which, in the period of

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Process PAR/2020/8 1v.

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reference, the financial entity has acted as a payment service provider for the intermediary.

Regarding the first situation (Transfers of funds in which, in the reference period, the financial entity has acted as the payer's

payment service provider) a description of the policies and procedures and controls defined and applied under the terms of article 67 of Notice no. 2/2018, which ensure compliance with the provisions of Articles 4 to 6 of Regulation (EU) 2015/847 and also information on the existence of automated mechanisms that allow compliance to the provisions of paragraph 6 of article 4 of the aforementioned Regulation, with a description of the respective operation.

It is recalled that pursuant to Article 4(1) of Regulation (EU) 2015/847, concerning information accompanying transfers of funds, the payer's payment service provider ensures that the transfer of funds is accompanied by the following information about the payer: name of the payer, payment account number of the payer, address of the payer, official identification document number, customer identification number or date and place of birth. In turn, the payer's payment service provider ensures that fund transfers are accompanied by the following information about the payee: payee name and payee payment account number. It should be noted that, by way of derogation from Article 4(1)(b) and Article 4(2)(b), in the case of transfers not made from a payment account or to a of payment, the payer's payment service provider shall ensure that fund transfers are accompanied by a unique transaction identifier rather than the payment account number or numbers.

Pursuant to Article 4(4) of the Regulation, 'Before carrying out the transfer of funds, the payer's payment service provider shall verify the accuracy of the information referred to in paragraph 1, on the basis of documents, data or information obtained from a reliable and independent source'.

This verification is deemed to have been carried out if the payer's identity has been verified in accordance with Article 13 of Directive (EU) 2015/849 and the information obtained through this verification has been retained in accordance with Article 40 or is Article 14(5), both of the same directive, applies to the payer.

Process PAR/2020/8 2

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Articles 5 and 6 of Regulation (EU) 2015/847 provide for several derogations from these provisions, in case, respectively, all payment service providers involved in the payment chain are established within the Union, or in the case of batch transfers from a single payer, where the payees' payment service providers are established outside the Union.

Regarding transfers of funds in which, in the reference period, the financial institution acted as a payment service provider for the beneficiary, the Annex provides a description of the policies and procedures and controls defined and applied in accordance with article 67 of the Notice 2/2018, which ensure compliance with the provisions of Articles No. 7 to No. 9 of

Regulation (EU) 2015/847, and also in relation to messaging or payment and settlement systems, for the purposes of of the provisions of paragraph 1 of article 7 of the aforementioned Regulation and article 68 of Notice 2/2018, the indication of the following information: identification of the message or payment and settlement systems used, indication of whether they comply with the provided for in subparagraph b)6, no. 2 of article 68 of Notice 2/2018; if the answer to point a) is negative, identification of the deficiencies detected and the control measures implemented to correct them. It also provides for procedures to detect the omission or incompleteness of information about the payer or beneficiary, as well as procedures for managing transfers of funds in which the information is missing, incomplete or contains inadmissible characters or data. Finally, the draft Instruction, in the annex to Instruction no. of the procedures and controls defined and applied in accordance with the provisions of article 67 of Notice no. 2/2018, which ensure compliance with the provisions of articles 10 to 13 of Regulation (EU) 2015/847, indication information on messaging or payment systems for settlement, for the purposes of article 10 and paragraph 1 of article 11 of Regulation (EU) 2015/847, as well as procedures to detect omission or incompleteness of information about the payer or payee, as well as procedures for managing transfers of funds where the information is missing, incomplete or contains

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Process PAR/2Q20/8 2v.

characters or data inadmissible for the purposes of Article 12(1) of Regulation (EU) 2015/847,

Having analyzed the draft amending Instruction that amends Instruction no. and are carried out under the terms set out in Articles 4 to 13 of Regulation (EU) 2015/847.

Approved at the CNPD plenary meeting of February 4, 2020

Filipa Calvão (President)