

CNPD

National Data Protection Commission

OPINION/2021/40

I. Order

1. Banco de Portugal asked the National Data Protection Commission (CNPD) to issue an opinion on the draft review of its Instruction No. 37/2012, of 15 October 2012, on the use of intelligent neutralization ("IBNS") and exchange of euro banknotes damaged by these systems.
2. The CNPD issues an opinion within the scope of its attributions and competences as an independent administrative authority with powers of authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57, in conjunction with subparagraph b) of paragraph 3 of article 58, and with paragraph 4 of article 36, all of Regulation (EU) 2016/679, of 27 April 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 n° 58 /2019, of 8 August, which enforces the GDPR in the domestic legal order.

II. Analysis

3. Pursuant to the preamble of this draft Instruction review, the purpose of this is to review the regulation of the use of IBNS by credit institutions and other entities that operate in a professional capacity with cash, namely with regard to the reporting of information on systems intelligent systems for neutralizing euro banknotes and establishing rules regarding the possibility of exchanging damaged banknotes by these systems, thus seeking to guarantee the safety of users, the effectiveness of the prevention of illicit acts and the support of laboratory expertise and police investigation activities.
4. Thus, the project establishes the principles that govern the use of IBNS and the rules applicable to the receipt/exchange of banknotes damaged by their actions.
5. Article 6 establishes the rules to be observed in the removal of banknotes damaged, or suspected of having been damaged, as a result of IBNS actions by entities that professionally handle cash. Number 3 provides that the entities to which this Instruction is addressed must ensure that the removal of damaged or suspected banknotes as a result of IBNS action is

mandatorily accompanied by the collection of the available information contained in Annex I, including the identification of the Presenter: full name, identification document, identification document number, email, telephone contact (phone or mobile), address, postal code, account holder, cardholder (if different from the account), account number (IBAN or other).

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6. The processing of personal data in question is based on legal obligations arising from the joint reading of Articles 6(1) of the Organic Law of Banco de Portugal, 10th of Decree-Law No. 195/2007, of 15 May, in accordance with European Union Law, finding a legal basis under the terms of Article 6(1)(c) of the GDPR.

7. Regarding the categories of personal data being processed, which are listed in point II (Identification of the Submitter) of Annex I, the CNPD considers them appropriate and necessary for the purposes envisaged, in compliance with the principle of data minimization enshrined in subparagraph c ) of Article 5(1) of the GDPR.

8. Just a brief note regarding the fulfillment of the right to information regarding the processing of personal data, which is attached to the Instruction Project. Since the processing of personal data is based on legal obligations, it is not based directly on the exercise of public interest functions by Banco de Portugal (cf. Article 21(1) of the GDPR), nor on the consent of the holders of the data (cf. Article 7(3) of the GDPR), the CNPD believes that the reference, in point 4.1., to the right to object to the processing and the right to withdraw consent is meaningless.

9. Therefore, for the sake of clarity of the terms of data processing, the CNPD recommends reviewing point 4.1., as well as point 4.2. (this one, in the part where the right of opposition is mentioned).

### III. Conclusion

10. On the grounds set out above, the CNPD considers that the processing of personal data provided for in the Draft Instruction does not give rise to reservations from the point of view of the legal regime of data protection, recommending only the revision of point 4 of the annex regarding compliance with the right to information, as explained above, in points 7 and 8.

Approved at the session of March 30, 2021

Filipa Calvão (President)