

// NATIONAL DATA PROTECTION COMMISSION

OPINION R/2020/93

## I. Order

The Securities Market Commission (hereinafter referred to as CMVM) asked the National Data Protection Commission (CNPd) to comment on the draft regulation on the self-assessment report of the governance and internal control systems of entities subject to joint and to the exclusive supervision of the CMVM and on the draft regulation amending CMVM Regulations No. 2/2007, No. 2/2015, No. 3/2015, No. 2/2002, No. 8/ 2018, No. 1/2020, No. 1/2017, No. 3/2016.

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 will be limited to the rules that provide for or regulate the processing of personal data.

## II. appreciation

A - Draft regulation on the self-assessment report of the governance and internal control systems of entities subject to joint supervision and the supervision of the CMVM

The Securities Market Commission (CMVM) is the authority responsible for supervising and regulating the financial instrument markets, as well as the agents that operate in them, promoting investor protection.

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Under the terms of the CMVM's public consultation document No. 5/2020, "this draft regulation proposes to replace the report evaluating the effectiveness of the compliance control system, the risk management service and the internal audit, with a self-assessment report'. Therefore, with regard to entities subject to joint supervision by the CMVM and the Bank of Portugal, it is proposed that the self-assessment report provided for in the regulatory projects proposed by the Bank of Portugal be sent annually to the CMVM, in order to prevent these entities from being obliged to to make two reports to the supervisory

authorities with different content. In turn, with regard to entities subject exclusively to the supervision of the CMVM, the draft regulation establishes the duty to prepare an annual self-assessment report on their governance and internal control systems, under the terms set out in the Annex to the draft regulation.

It should be noted that, under the terms of the aforementioned consultation document, the "model of the self-assessment report provided for in the Annex to the draft regulation, although it provides for identical elements to the self-assessment report of the entities subject to the joint supervision of the Bank of Portugal and the CMVM, includes adjustments and simplifications that reflect proportionality concerns. This proportionality will also be reflected in the information to be presented in the report by the obliged entities, as this will be consistent with the specific organizational requirements to which each entity is individually subject, under the terms of the applicable legal and regulatory regime».

The Annex to the draft regulation under analysis, provides in subparagraph d) of paragraph 1 of point A concerning the minimum content of the annual self-assessment report, the processing of personal data relating to the identification of those responsible for the internal control functions, with the indication of the respective contacts. According to the table on regulatory procedure No. 4/2020, sent by the CMVM, this identification data comprises "full names, signatures, addresses, telephone numbers, email addresses, professional occupations, among others". Attention is drawn to the fact that point A(1)(d) does not densify the information in question. However, the collection and conservation of personal data comply with the principles of purpose and data minimization, so only identification elements of those responsible for the control functions strictly necessary for the purpose in question should be collected - cf. subparagraphs b) and c) of paragraph 1 of article

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5 of the GDPR. It is therefore recommended to specifically list the personal data to be processed, also for reasons of procedural transparency.

On the other hand, these precepts are aimed at the processing of personal data under the terms of Article 4, paragraphs 1) and 2), of the GDPR, so it is recommended that an express reference be made to the legal regime of data protection enshrined in the RGPD, safeguarding the data subjects' rights to information, access and rectification under the terms set out in articles

14 to 16 of this legal instrument.

It should be noted that, under the GDPR, the processing of the data in question will be lawful, among others, if the processing is necessary to comply with a legal obligation to which the data controller is subject (cf. 1(c) of the GDPR) or the exercise of the public authority vested in the controller (cf. subparagraph e) no. 1 of the same article).

With regard to the identification data of those responsible for the internal control functions, the CMVM needs this information to verify compliance with the organizational requirements to which companies are bound pursuant to article 56 of Law no. /2015, of March 4, last amended by Law No. 25/2020, of July 7 (Legal Regime for Venture Capital, Social Entrepreneurship and Specialized Investment) so its treatment is based on law in paragraph e ) Article 6(1) of the GDPR.

Finally, it is important to mention the need to establish in the draft regulation a maximum period for the storage of personal data in accordance with Article 5(1)(e) of the GDPR.

B - Draft regulation amending CMVM Regulations No. 2/2007, No. 2/2015, No. 3/2015, No. 2/2002, No. 8/2018, No. 1 /2020, no. 1/2017, no. 3/2016.

Regarding this draft regulation, it is noted that article 12 (amendments to CMVM Regulation no. Article 2 of CMVM Regulation No. 1/2017, that real estate appraisers must report to the CMVM information about real estate appraisers individuals  
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registered to expert property appraisers legal persons. Also, ANNEX F, added to CMVM Regulation no. 1/2017 by article 13 of the draft regulation, provides for the mandatory completion of Field 2 with the registration number with the CMVM of the real estate appraisal expert who provided real estate appraisal services to the legal person real estate appraiser.

The identification of real estate appraisers who are registered with the CMVM is necessary for this entity to be able to exercise supervision over this activity under the terms of article 21 of Law no. access and activity of real estate appraisers who provide services to entities of the national financial system. It should be noted that under the terms of subparagraph c) of paragraph 1 of article 22, it is incumbent upon the CMVM to approve the necessary regulations on the matter of reporting duties by property appraisers, which has now been implemented.

In turn, in ANNEX A (referred to in article 3 of the draft regulation, which deals with amendments and additions to the annexes

to CMVM Regulation No. 2/2015, of 17 June), in Annex 13 ( concerning Information on the activity of collective investment undertakings, II - Specifics relating to the activity of real estate investment undertakings AFI), in paragraphs 9.7 and 9.8, the identification of the counterparty is provided by filling in the respective fields with the name and NIF, if there is no LEI code, and in point 9.12, the identification of the assessor I is required in field 12 indicating the respective number of the expert responsible for the assessment I and in point 9.14 the identification of the assessor II.

Annex 15 (Portfolio of Real Estate Investment Undertakings - CFI) also provides for the identification of appraisers I, II and III in points 1.16, 1.19 and 1.22 through the CMVM registration number of the expert responsible for the appraisal.

In turn, in Annex 22 (information regarding the auditor's report of collective investment undertakings) it is mandatory to fill in Field 2 with the CMVM registration number of the Statutory Auditor (ROC) who signs the Audit Report.

Pursuant to article 241 of Law No. 16/2015, of 24 February, last amended by Law No. 25/2020 of 7 July, (General Regime for Collective Investment Undertakings), the supervision of the provisions in the General Regime it is the responsibility of the CMVM, and paragraph 4 provides that the «CMVM establishes the appropriate methods for verifying that the

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entities responsible for management comply with the obligations that prevent them".

Among these obligations is the need to ensure the plurality and rotation of auditors in order to protect against situations likely to generate conflicts of interest between them and collective investment undertakings, under the terms of articles 131 and 132 of the General Regime of Undertakings for Collective Investment. Articles 144 and 145 of the General Regime establish rules for the valuation and valuation of real estate, enshrining the plurality and rotation of expert appraisers.

Finally, it should be noted that the registration number of the Statutory Auditor who signs the legal certification of accounts (CLC) is required in Annex VI - Information on the legal certification of accounts (CLC) of ANNEX E (referred to in Article 11 - Amendments and addition of attachments to CMVM Regulation No. 1/2020, of 25 February, concerning the submission of information to the CMVM for prudential supervision purposes. prudential supervision arises from the transfer from Banco de Portugal to the CMVM of the prudential supervision powers over collective investment undertaking management companies and credit securitization fund management companies, operated by Decree-Law No. 144/2019, which focused on , at the

CMVM, the prudential and behavioral supervision of these entities.

Thus, the CMVM needs to process the information in question for the exercise of the supervisory powers legally conferred on it, so its treatment is based on lawfulness in subparagraph e) of paragraph 1 of article 6 of the RGPD.

As a final note, the CNPD cannot fail to point out the lack of provision in the draft regulation of essential elements of data processing resulting from its application, in particular the data retention period and security measures to be adopted.

### III. Conclusion

a) Based on the above grounds, it recommends: As for the regulation on the self-assessment report of governance systems and

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internal control of the entities subject to joint supervision and the supervision of the CMVM the specific enumeration of the personal identification data to be processed; b) For both draft regulations, the definition of data retention periods and security measures to be adopted.

Lisbon, August 5, 2020

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