

I. Request

1. The Securities Market Commission (CMVM) asked the National Data Protection Commission (CNPd) to issue an opinion on the draft Regulation that regulates the information duties of issuers of securities and the regime applicable to takeover bids.
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 to control 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 8 of August, which implements the GDPR in the internal legal order.

II. Analysis

4. Amendments to the Securities Code, approved by Decree-Law 489/99, of November 13, (CVM), operated by Law No. 99-A/2021, of December 31, which aim to reduce and simplification of charges for Issuers of securities subject to CMVM supervision, the promotion of a more effective and consequent intervention by its shareholders and the alignment of the national legal framework with that of the European Union, make it necessary to review several applicable CMVM Regulations to Issuers.
5. Thus, the draft Regulation aims to revoke CMVM Regulations No. 5/2008 (Information obligations), 3/2006 (Offers and issuers), 11/2005 (Scope of International Accounting Standards), 6/ 2002 (Presentation of Financial Information by Segments) and 7/2018 (Amendment to CMVM Regulation No. 5/2008) and review and integrate all these matters not subject to revocation into a single Regulation. This draft regulation is drawn up pursuant to article 369 of the CVM.

6. The Project includes the processing of personal data (name) of the members of the management and supervisory bodies, as well as the board of the general meeting, if any, of the statutory auditor and respective amendments, as well as the representative for the relations with the market and the CMVM

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(cfr paragraphs 1 and 2 of article 6), identification data of directors and persons closely related (including full name, NIF and position or function held), academic training and professional experience of experts, criminal data, information regarding the insolvency situation for assessing suitability and CV (cf. articles 15, 16 and 17 and Annex II B), as well as the names and family relationships of the natural persons who participate in the preparation of the assessment and the persons closely related to it related - spouse or person living in de facto union; descendants in your care; and other family members who have been living with you for more than a year (cf. paragraphs 4 and 5 of article 18).

7. 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 is lawfully based on sub-paragraph e) of no. 1 of article 6 of the RGPD, when it is not to comply with a legal obligation.

8. The personal data being processed are necessary and appropriate 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.

9. Furthermore, the AIPD identifies some elements related to the processing of personal data, assessing risks and providing for mitigating measures.

10. Essentially, the envisaged regime does not raise reservations from the perspective of its compliance with the legal regime of personal data, except for the data retention periods, 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 January 23, last amended by Law no. 26/2016, of August 22, that is, at least until the date on which the purpose that justified its collection 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.

11. Now, 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, by sending this legal diploma for administrative regulation (Regulatory Decree) the setting of conservation periods (cf. no. 2 of article 15 of Decree-Law no. 16/93), it cannot but be required here too, in the context of treatments of personal data carried out by the CMVM, the setting of deadlines for the conservation of personal data being processed, depending on the need to conserve such data for the intended purposes, under the terms of subparagraph e) of paragraph 1 of article 5. ° of the GDPR. Article 6(3) of the GDPR also points in this direction.

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12. 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).

III. Conclusion

13. The Draft Regulation of the CMVM does not raise reservations from the perspective of its compliance with the legal regime of personal data, except as regards the retention periods of the data subject to processing, which are omitted, recommending its setting in the Draft's articles .

Approved at the meeting of December 21, 2022

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