
Intellectual Property, Media and IT

Legal Flash | Portugal

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- **Effects on data protection of transposing the European Union's sixth Anti-money Laundering Directive**



I. Amendments to registration of the effective beneficiary in the Central Registry

Law 58/2020 of August 31 ("Law 58/2020") introduced several amendments to registration of the effective beneficiary in the Central Registry of Effective Beneficiaries ("RCBE") established by Law 89/2017 of August 21.

We highlight the following changes:

Protocol executed with the Institute of Registration and Notary Affairs (IRN, I.P.)

› Automatic transmission of information is authorized through the use of public administration databases that store such information, subject to a protocol signed between the IRN, I.P. and the organization responsible for processing the data. If the databases are external or outside the control of the IRN, I.P, this protocol must first be assessed by the National Data Protection Commission ("CNPD").

Exemption from the obligation to identify shareholders and managers or directors.

› To register a beneficial owner in the RCBE, it is no longer mandatory to identify the shareholders, managers, directors or whoever manages or heads the organization subject to RCBE registration.

Identification of the control chain and the organizations in it.

› New categories of personal data for identifying the control chain and the organizations in it are collected, and new data and a contact email address for the declarant are now required.

Transitional arrangement

› The new information required must be reported as soon as possible and no more than 30 days after the date of the event giving rise to it. However, consideration must be given to the law's transitional arrangement, which states that the new reporting obligations (i.e., the 30-day deadline) will only become effective from the "first business day of the third month after the month the current law enters into effect," i.e., December 2, 2020.



II. Amendments to the General Legal Framework for Credit Institutions and Financial Companies

This new law amends article 81-A of the General Legal Framework for Credit Institutions and Financial Companies (“RGICSF”), which was approved by Decree-Law 298/92 of December 31.

The amendment affects the deposit, payment, credit, financial instrument and safe deposit account database compiled and managed by the Bank of Portugal. The organizations subject to this database are designated as “participating entities” by law, and the following institutions have now been classified as such:

- › Electronic money institutions; and
- › Postal institutions authorized by national law to provide payment services.

These organizations must now disclose the anti-money laundering information legally required by the Bank of Portugal, i.e., the identity of the owners, effective beneficiaries and individuals authorized to operate the accounts, including attorneys, agents and other representatives.

The Financial Information Unit (*Unidade de Informação Financeira*) and the Central Department of Criminal Investigation and Action (*Departamento Central de Investigação e Ação Penal*) can now access unfiltered personal data directly and immediately.

The law also states that data processing must comply with the principles and guarantees of the General Data Protection Regulation (GDPR), specifically the principle of confidentiality. The technical and organizational measures designed to comply with the GDPR will be defined in a protocol to be executed by the Financial Information Unit or the Central Department of Criminal Investigation and Action and the Bank of Portugal. However, unlike the data processing security measures set out by Law 58/2020 on the Central Registry of Effective Beneficiaries, these will not need to be assessed in advance by the National Data Protection Commission.



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