



EUROPEAN CENTRAL BANK
EUROSYSTEM

ECB-PUBLIC

Yves Mersch
Member of the Executive Board

[COURTESY TRANSLATION¹]

Mr Eduardo Ferro Rodrigues
President of the Assembly of the Republic
Palácio de São Bento
1249-068 Lisboa
Portugal

23 January 2019

Dear Mr Ferro Rodrigues,

It has come to the attention of the European Central Bank (ECB) that the Portuguese Parliament adopted Law No 104/2019 of 6 September, as published in the Portuguese Official Journal, on the reform and extension of the State's Organisation and Information System (SOIS)² (hereinafter the 'Law').

The ECB understands that the Law reforms and enlarges the existing SOIS, and establishes the framework in accordance with which all public entities – including the Banco de Portugal (BdP) – must report specific information concerning their human resources (including the entities' social activity and their employees) to the Directorate-General of Public Employment and Administration, which is a body that is part of the State's public administration system. The SOIS is made up of structured, organised, harmonised and up-to-date information on: (i) characteristics of public employers, including their social activity³ and characteristics of their employees;⁴ and (ii) the identity and personal data of public employees – regardless of their contractual relationship with the public employer – as well as of any persons providing services to those public employers.

The ECB understands that according to the Law, the Directorate-General of Public Employment and Administration is the entity responsible for the management, organisation and development of the SOIS and is competent to, inter alia, '[o]rganise and process the information collected in order to pursue the

1 The official ECB letter is addressed in the official language of the concerned Member State.

2 Lei n.º 104/2019, de 6 de Setembro, que reformula e amplia o Sistema de Informação da Organização do Estado e revoga a Lei n.º 57/2011, de 28 de Novembro, e o Decreto-Lei n.º 47/98, de 7 de Março (Diário da República n.º 171/2019, Série I de 2019-09-06).

3 This includes all legal and institutional information related to the public entity itself.

4 For example, identity of employees, changes in employee numbers and/or identity, employees' professional development, health and safety conditions, work-related accidents and diseases, strikes by employees, and details of persons providing services to the public entity.

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objectives provided for in the [L]aw'. According to the Law, both the SOIS in general, and the processing of information on employees' identity and other personal data, have the following purposes: (i) to collect, prepare and produce information and indicators concerning labour market statistics and other management and planning indicators; (ii) to plan, execute, supervise and evaluate the budgeting and implementation of policies related to the management of human resources of entities to which the Law applies; (iii) to manage, control, supervise and evaluate movements of employees in those entities to which the Law applies, in particular changes occurring as a result of reorganisation measures applied to public employers (such as the restructuring or merging/demerging of public services) or as a result of other alterations in contractual arrangements with employees (such as changes in work location, reallocation to other functions, or mobility); (iv) to manage and control the system of maximum working time and compensation for overtime; (v) to manage and control public interest assignment agreements in the context of union activities; (vi) to ensure electronic data exchange in the context of the coordination of social security systems; and (vii) to ensure that every public employer can produce its social report or equivalent management instrument by accessing its own relevant data and indicators that are to be included in its management and planning instruments.

The Law also provides for the following sanctions by the competent Directorate-General for non-compliance with the duties to report, update and cooperate that it imposes: (i) the retention of part of the public entity's financing by the State budget; (ii) the non-progression of human resources processes, and of processes for the acquisition of goods and provision of services; and (iii) in the case of repeated and unjustified non-compliance, the termination of the contractual professional trust-based relationship of the responsible manager, without prejudice to the disciplinary, civil and financial liability of such managers.

The effect of the Law is that the purposes (i) to (vii) mentioned above can be pursued in relation to (and therefore have effects on) all entities included within the scope of application of the Law, including BdP. The Law also provides for the possibility that such entities are subject to sanctions by a governmental body.

Based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and on Article 2(1) of Council Decision 98/415/EC,⁵ national authorities are required to consult the ECB on draft legislative provisions on matters that fall within its competence, including legislative provisions concerning national central banks.

To the extent that the Law can be interpreted as conferring on the Directorate-General of Public Employment and Administration the powers to set up, implement, evaluate and supervise the budgeting and implementation of human resources policies within the BdP and to have overall management control of BdP's human resources, questions arise concerning the Law's compatibility with the autonomy of the national central bank in the area of human resources management. As noted previously by the ECB,⁶ Member States may not impair the ability of a national central bank to employ and retain the qualified staff necessary for it to perform independently the tasks conferred on it by the Treaty and by the Statute of the

⁵ Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

⁶ See ECB Convergence Report 2018, section 2.2.3.

European System of Central Banks and of the European Central Bank. Nor may a national central bank be put in a position where it has limited or no control over its staff, or where the government of a Member State can influence that national central bank's policy on staff matters.

The ECB would appreciate the Portuguese Parliament giving due consideration to the above observations by honouring the obligation to consult the ECB in the future, where applicable.

Yours sincerely,

[signed]

Yves Mersch

Cc: Mr C. da Silva Costa, Governor of the Bank of Portugal
Mr P.Gentiloni, Economy Commissioner, European Commission
Mr L. Romero Requena, Director-General of the Legal Service, European Commission

Encl. Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions