

I. Order

The Cartaxo City Council is asking the National Data Protection Commission (CNPd) to comment on the draft "Regulation for live and online audio/video transmission of meetings of the bodies of the Municipality of Cartaxo".

The request made and the opinion issued now derive from the attributions and powers of the CNPD, as an independent administrative entity with powers of authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and paragraph 4 of article 36 of Regulation (EU) 2016/679 of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of paragraph 1 of article 21, and Article 22(1), both of Law No. 67/98, of October 26, amended by Law No. 103/2015, of August 24 (Personal Data Protection Law - LPDP).

II. appreciation

The purpose of the Regulation is to film and broadcast live and online audio/video of the meetings of the bodies of the Municipality of Cartaxo, so that the transmission can be viewed on the Municipality's website.

The aforementioned live transmission corresponds to the processing of personal data, under the terms of points 1) and 2) of the GDPR, as it involves the collection and dissemination of information relating to identified or identifiable natural persons.

This information includes not only the person's image, which also reveals the place and context in which they are at a given moment, but also the content of their statements, which may expose, among other personal data, aspects of the declarants' private life. or third parties and disclose political, philosophical or other beliefs.

To that extent, the aforementioned disclosure affects, in addition to the right to image, the right to the protection of personal data and is susceptible, depending on the content of the statements made, to affect the right to reserve privacy (see paragraph 1 of the Article 26 and Article 35 of the Constitution of the Portuguese Republic).

However, there is no legal norm that specifically provides for this data processing and no legal norm that recognizes local authorities with a specific disclosure function

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media coverage of its usual plenary activity¹, the prior and express consent of all the people covered by the filming and transmission appears as the only condition capable of legitimizing the aforementioned data processing.

Thus, the CNPD points out the compliance with the GDPR of the provisions of subparagraph a) of article 2 of the Regulation, which makes the lawfulness of said treatment conditional on the consent of the participants in the meetings, which must comply with the requirements of subparagraph 11) of article 4 of the GDPR - cf. Article 6(1)(a) and Article 9(2)(a) of the GDPR. The CNPD recalls that the aforementioned consent must be collected not only in relation to those who, in the exercise of their functions or in the exercise of the right to participate, make statements during the meetings, but also in relation to those who exercise the same right to participate through the mere presence or assistance therein.

It is only recommended to change the wording in the final part of the precept, updating the reference to the legal diploma: considering the application, since May 25, 2018, of the RGPD, it is suggested to replace the expression "under the terms of the Data Protection Law Personal Data» by under the terms of the General Regulation on Data Protection or under the terms of the legal regime for the protection of personal data, since that formula is the one that typically identifies Law n.º 67/98, of 26 October (in part already revoked by the GDPR).

With regard to paragraphs b) and c) of article 2, specifically addressed to citizens, the CNPD also recommends providing for the guarantee of the right to information, as well as an adequate means of recording their consent, not only for Council meetings, but also within the scope of Municipal Assembly meetings. In addition to the transmission of the image, the transmission of any declarations that they make, if given the opportunity to do so, must also be specified in the model of the declaration of consent, transcribed in point c), in addition to the transmission of the image.

¹ With regard to publicizing the activity of local government bodies, the law is clear in determining which legal acts deserve such publicity (Article 56 of Law No. 75/2013, of 12 September - Legal Regime of Local Authorities).

Still on the subject of the right to information, referred to in paragraph b) of article 2, the importance of specifically alerting to the fact that images and sound, once made available on Une, are susceptible to being reused and disseminated by third parties.

In relation to article 3, in paragraph c) the provision of the duty to adopt security measures is noted. Although the terms of its provision are generic, adding little to the obligation imposed by the GDPR (Article 24), the importance of adopting measures that guarantee the integrity of the content during transmission is still underlined, so the reference to measures to prevent the alteration of the images and sound transmitted seems relevant. Due to the nature of things (due to the availability of information on the Internet), the reference to the objective of preventing unauthorized dissemination or access to images and sound will no longer be so pertinent. The CNPD therefore recommends deleting this reference.

Also in the context of the same article 3, it is important to reformulate the provisions of subparagraph d), due to the confusion that it can generate in the application.

In fact, the RGPD refers to the vital interests of the holders of personal data, but in order to characterize situations in which the life of the data holders is at risk and they are not in a position to consent to the processing of personal data that it can be an instrument to combat that risk - this is a condition of lawfulness of data processing by rule referring to the health of the respective holders, provided for in subparagraph c) of paragraph 2 of article 9.

However, in the context of municipal meetings, it is assumed that it will not be normal for the processing of personal data carried out with the transmission of the same to interfere with the physical integrity and life (in the sense of being able to put it at risk) of the participants in the meetings. Nevertheless, it is accepted that the intention here is to safeguard the power to suspend or prohibit, partially or totally, the transmission of the meetings, in order to safeguard situations in which the rights and interests of the holders of personal data are urgently asserted, prevailing over the interest of information of the population underlying this processing of data - as may happen when the subject or the statements that are produced concern especially sensitive dimensions of the lives of the people concerned. This provision is, from the perspective of the protection of personal data, fundamental, so the CNPD only recommends revising the wording of paragraph c) of article 3, clarifying its meaning. suggests, to this

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purpose, that where it is mentioned "[...] when it becomes necessary to protect the vital interests of the data subjects and circumstances require it [...]", it should now refer to: "[...] when the specific circumstances demonstrate the need to protect the prevailing rights or interests of data subjects, [...]".

III. Conclusion

On the grounds set out above, the CNPD considers that the Regulation in question is in compliance with the GDPR, with regard to the condition of lawfulness of treatment - in this case, the consent of the participants in the meeting.

It also considers that other aspects of the regime should be improved, namely the provisions of Articles 2 and 3 of the Regulation, in the terms explained above.

Lisbon, February 26, 2019

Filipa Calvao (President)