

National Data Protection Commission

OPINION/2022/61

## I. Order

1. The Atiães Parish Council sent to the National Data Protection Commission (CNPd) the «Regulation for the live transmission of the Atiães Parish Assemblies» for the purpose of issuing the corresponding opinion.

2. The request made and the present opinion fall within the attributions and powers of the CNPD, as an independent administrative entity with authoritative powers to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57. °, in conjunction with Article 58(3)(b) and Article 36(4), all of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 December April 2016 (General Regulation on Data Protection - RGPD), 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 August 8, which implements the GDPR in the domestic legal order.

## II. Analysis

3. In accordance with the provisions of article 1 of the Regulation, it regulates “the capture and transmission of audio and video, live and online, of the Parish Assemblies of Atiães”. Article 2 clarifies that "live transmission" means "the capture of public meetings of the Parish Assembly of Atiães through technical and electronic means and the transmission of the audio and video captured, in real time, through the internet, on the Parish website and, in addition, on other digital platforms».

4. The live and online audio and video transmission of the Parish Assembly meetings corresponds to the processing of personal data, under the terms of paragraphs 1) and 2) of article 4 of the GDPR, as it involves the collection and dissemination of information relating to identified or identifiable natural persons.

5. The information collected includes not only the image of people, but also other personal data, first of all, the place and context in which they are at a given moment and the content of their statements, which may expose, among others personal data, aspects of the declarant's or third party's private life and revealing political, philosophical or other beliefs.

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

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PAR/2022/46

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7. For this reason, the dissemination of meetings on the Internet in real time must comply with the principles and rules enshrined in the RGPD, and there must be, from the outset, a legal basis for the online capture and dissemination of personal data.

8. The Regulation under analysis distinguishes the legal grounds according to the quality of the intervening parties.

9. Thus, article 5 of the Regulation, under the heading "Transmission of Interventions by the Municipal Executive" determines that "[t]he live transmission of interventions, under the applicable legal terms, does not require authorization or consent as it is considered, in this context, that the aforementioned transmission results from the exercise of the position for which they were elected and that they perform and the reproduction of their image and audio is captured in public places, in the exercise of functions of public interest».

10. As regards the public in general, it is stipulated that the period for their interventions is not transmitted (see Article 4(2) of the Regulation).

11. There is still another category of data subjects, which are the «guest citizens», and the live transmission of the respective interventions depends on their authorization, under the terms of article 6 of the Regulation.

12. If the provisions of Article 4(2) and Article 6 of the Regulation do not raise reservations for the CNPD, Article 5 raises several doubts.

13. In the first place, the title of the article, which refers to the «Interventions of the Municipal Executive», cannot be understood, assuming that this is the result of an oversight. Not discussing the possibility of representatives of the municipal council of the municipality where the Parish of Atiães is located having an intervention in the meetings of the Assembly of this Parish, the truth is that, if article 5 is not interpreted as intending to regulate the transmission of the interventions of the elected members of the Parish Assembly, this processing operation would not be subject to regulation, which would seem inappropriate in a regulation aimed at providing for and regulating the online transmission of the Parish Assembly meetings. Therefore, the CNPD suggests revising the heading of article 5 of the Regulation.

14. But the text of the article also raises reservations. From the outset, it is not known what are the «legal terms applicable» to the «live transmission of interventions». In fact, the only known legal rule is an exceptional and temporary measure to respond to the epidemiological situation of the COVID-19 disease and which, incidentally, is no longer in force, which, therefore, due to its exceptional and temporary nature, does not support the processing of personal data that is intended to be regulated here.

PAR/2022/46

two

National Data Protection Commission

15. Indeed, paragraph 2 of article 3 of Law no. 1-A/2020, of 19 March, last amended by Law no. 91/2021, of 17 December, to ensure the publicity of meetings of municipal bodies which, in legal terms, are public - as is the case with meetings of the Parish Assembly -, required the recording and availability of such meetings on the website of the municipality. The same provision also allowed the live online transmission of the aforementioned public meetings. But nothing else regulated, nothing about the processing of personal data that such transmission implied.

16. Thus, the existence of a legal rule that provides for or governs the processing of personal data resulting from the recording, online availability and live transmission of interventions at meetings of municipal bodies is unknown. Nor is there any legal provision that requires local authorities to broadcast online in real time the public meetings of their bodies.

17. And, above all, outside of exceptional periods of social confinement and other restrictions on fundamental rights, it is not necessary to carry out the principle of publicity of meetings of parish assemblies, the online transmission of said meetings and interventions of the elected members of these bodies . Above all, because the judgment of the need for data processing requires considering the impact or risks arising from it for the rights of data subjects and its weighting with the degree of

satisfaction of the advertising purpose, in comparison with other less impactful means of advertising. of meetings - and, as will be explained further below, the risk of reusing images and statements made for any purpose, without the possibility of control, is very high when they are made available on an open network.

18. As there is no legal obligation to carry out such transmission, nor is such disclosure necessary for the pursuit of the legally defined attributions of the parishes, it appears that only consent is adequate to ensure the lawfulness of the treatment. For the purpose of legitimizing the processing of personal data that this transmission implies, the provisions of subparagraph e) of paragraph 1 of article 6 of the RGPD do not serve.

19. Thus, given the nature of the information that may be disclosed in the context of interventions in such meetings, the CNPD recommends amending Article 5 of the Regulation, in order to require the consent of the interveners concerned therein, in accordance with the established in Article 6(1)(a), Article 4(11) and Article 9(2)(a) of the GDPR.

20. It should be noted that, from the perspective of the CNPD, in the absence of informed, free, specific and unambiguous consent from the parties involved for the processing of personal data resulting from the capture and online transmission of the respective interventions, the treatment will be unlawful.

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PAR/2022/46

21. In fact, strictly speaking, consent must be collected not only from those who, in the exercise of their functions or in the exercise of the right to participate, make statements during the meetings, but also with regard to those who exercise the same right to participate through the mere presence or attendance at meetings, including workers who provide support during the Online transmission of the session, provided that their images or statements are susceptible to capture and transmission online.

22. Thus, the need for consent to comply with the requirements of Article 4(11) and Article 7 of the GDPR is underlined (an

adequate means of recording consent must exist).

23. For this purpose, the information specified in Article 13 of the GDPR must be provided, with particular emphasis on the fact that images and sound, once made available online, are susceptible to reuse and dissemination by third parties. And it is up to the person responsible for the treatment - the Parish - to prepare a declaration of consent that meets such legal requirements, in accordance with the principle of proactive responsibility enshrined in paragraph 2 of article 5 of the RGPD.

24. It is also clear from article 2 of the Regulation that the transmission of the sessions will be carried out in real time, via the Internet, «(...) on the Parish website and, in addition, on other digital platforms».

25. It is important to remember in this regard that the principles of proportionality and data minimization (see Article 5(1)(c) of the GDPR) require that personal data be processed to the extent strictly necessary to achieve the intended purpose.

26. Thus, in view of the provision in Article 2 of the Regulation, which gives rise to the possibility of, in addition, the transmission of sessions taking place on digital platforms, in particular on social networks, the CNPD recalls that there are increased risks arising from the making available on platforms that have the nature of social networks the images and sound captured during the meetings, as these platforms promote the reuse of personal data for other purposes, and may serve to create profiles on the people to whom the data relate, without the Parish or the data subjects having control over this and all subsequent treatments.

27. For this reason, the CNPD recommends reconsidering the forecast of transmission on digital platforms, taking into account that, in legal terms, the specific context for disclosing municipal activity, as well as the specific risks of reusing personal data for different purposes and doubts regarding the adequacy and necessity of this personal data processing operation for the pursuit of public attributions. It is noted, in this regard, that the suitability and necessity of the processing of personal data by public entities on digital platforms with the nature of a social network is being analyzed within the European Data Protection Committee.

PAR/2022/46

3

National Data Protection Commission

28. The CNPD also alerts to the need for the processing of personal data resulting from the possible transmission of meetings on digital platforms to be subject to a specific and autonomous consent, accompanied by information on the risks of re-use of

data in the context of these digital platforms and with their specification.

### III. Conclusion

29. Based on the above grounds, the CNPD recommends:

The. the revision of article 5 of the Regulation, both the title and the text of the article, to make the processing of personal data resulting from the online transmission of the meetings depend on the consent of all stakeholders, even the elected members of the Parish Assembly;

B. reconsideration of the possibility of transmitting meetings on digital platforms that correspond to social networks, taking into account the specific risks of reusing personal data for different purposes and doubts as to the suitability and necessity of this personal data processing operation for the pursuit of public attributions.

30. The CNPD further clarifies that:

The. consent must be obtained in relation to all those present at the meetings of the Parish Assembly whose images or statements can be captured and transmitted online]

B. consent is only valid to legitimize the treatment if it is informed, specific, free and unambiguous, and therefore, it must be autonomous and the consent for the transmission of the meetings on digital platforms must be specified, if this is the end foreseen;

ç. the information provided for in Article 13 of the GDPR must be provided before consent is obtained.

Approved at the meeting of July 19, 2022

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