

GUIDELINES/2019/1

Regarding the processing of personal data

in the context of electoral campaigns and political marketing

Contacting voters and sending political messages to each voting citizen is essential to the functioning of democracy, as an important contribution to the formation of political convictions and for the creation of conditions of freedom of choice within the scope of electoral acts.

In the context of political marketing and electoral campaigns, it is not ignored that political parties, politicians, political coalitions, citizen voting groups and candidates use more and more personal data and sophisticated profiling technology to track and adapt the messages to each citizen.

In fact, the use of data analysis tools, as demonstrated in the case of Cambridge Analytica, allows you to systematize the information collected on websites, social networks and computer applications (apps), relating to opinions, life habits, characteristics and traits of each of the users, according to personality or behavior created in an automated way, in order to adjust and differentiate the information or political messages and influence one's choices.

The lack of transparency in these processes increases the risk of manipulation of access to information and conditioning freedom of thought and opinion, in contempt of the principles and rules that should guide the use of citizens' personal data.

For this reason, with several electoral campaign periods approaching in Portugal, the National Data Protection Commission (CNPd) defines a set of guidelines regarding the processing of personal data in the context of electoral and marketing campaigns policy, with the aim of clarifying the legal regime in force regarding the treatment of

personal data for the purposes of political propaganda, in particular the General Regulation on Data Protection¹.

These guidelines are primarily intended for political parties, groups of citizens voters, candidates, as well as companies that provide or process data personnel for political propaganda.

This document is based on Declaration 2/2019 adopted by the European Committee on Data Protection on March 13², taking into account the measures presented by the European Commission in September 2018³, as well as the conclusions of the Council and the Member States on the holding of free and fair European elections⁴.

1. Personal data that reveal political opinions correspond to a category of data specially protected⁵. Thus, the processing of such data is, in principle, prohibited, and only can be carried out under very strict conditions⁶. Among these, the hypothesis that the citizens have given their explicit, fully informed, free and specific consent for the purpose of political marketing.

□ This presupposes the transparency of the processing of personal data: who collects the data or who reuses them must inform the data subject about the treatment; in particular, it must make clear who is responsible for the processing of data, what information about it is collected and used, for

¹ Regulation (EU) 2016/679, of 27 April 2016, hereinafter GDPR.

² Accessible at https://edpb.europa.eu/our-work-tools/our-documents/other/statement-22019-use-personal-data-course-political-campaigns_en .

³ In particular, the Guidelines on the application of EU data protection legislation and the Recommendation on electoral cooperation networks, online transparency, protection against incidents in

cybersecurity

and

The

fight

against

at

campaigns

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Misinformation: https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-cybersecurity-elections-recommendation-5949_en.pdf.

⁴<https://data.consilium.europa.eu/doc/document/ST-6573-2019-REV-1/en/pdf>.

⁵ Cf. paragraph 3 of article 35 of the Constitution of the Portuguese Republic, article 8 of the Charter of Fundamental Rights of the European Union and Article 9(1) of the GDPR.

⁶ Provided for in Article 9(2) of the GDPR.

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what specific purpose or specific purposes are collected or used

the data, where they are collected (when the data has not been collected with the holder).

☐ It is noteworthy that the duty of information falls on both those who collect the personal data directly with the data subject (e.g., data brokers, companies that provide computer applications or exploit social networks), such as about political parties, citizen groups of voters or candidates when using personal databases provided by third parties for the purpose of political propaganda or political marketing.

2. Personal data that have been manifestly made public by each person, even

that are not data revealing political opinions, continue to be subject and protected by the GDPR. This information may not be used by third parties without complying with the legal obligations in terms of transparency (duty to provide information) and respect for the principle purpose and the principle of proportionality.

□

It is important to clarify that this is about information manifestly revealed by people about themselves in the context of social communication or, perhaps, in social networks in a space open to the undifferentiated public, not being able to legitimize in this way the use of information inferred from the data made public by themselves.

3. Even in cases where the processing is lawful, i.e., it is based on one of the conditions provided for in paragraph 2 of article 9 of the GDPR, companies and political parties (and other actors in the context of election campaigns) must fulfill their other duties under the GDPR, including the duty to inform people that you are reviewing them and process your personal data, whether or not the data were obtained directly from citizens. Political parties and candidates must be ready to demonstrate that way they complied with data protection principles and rules.

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4. The uniquely automated decision-making process, including the creation of profiles, when the decision affects the rights of the persons concerned or affects them significantly similarly, is subject to legal restrictions. The definition of profiles relating to the specially targeted transmission of information content or disclosure of specific policies may, in certain circumstances, affect citizens, so, in principle, they can only take place with the consent explicit of the same.

□ Therefore, when messages are specially addressed to a particular voter

or predetermined set of voters through an automated process,

adequate information should be provided to voters explaining why

receive a particular message, who is responsible for it and how

can exercise their rights as data subjects.

5. Furthermore, political parties, as well as groups of citizens, are legitimized

to process the personal data of its members or former members, or people with

who have regular contact in the context of their activity, as may happen with

party supporters.

□ In this regard, it is specifically recalled that the lawfulness of processing

data does not depend only on the verification of the condition for carrying out the

processing, but also respect for the principle of data minimization

personal; which means that only personal data that is

adequate, necessary and not excessive in relation to the pursuit of the purpose

management of parties or groups of citizens in this context (not being

permissible, for example, the processing of geolocation data for

behavior monitoring).

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6. It should also be noted that, under national law, political parties and groups of citizens

voters may also access certain personal data of voting citizens in the context of

campaigns or electoral acts, namely:

i.

ii.

Lists of voters, with identification and address, residing abroad⁷;

Electoral census notebooks (which contain only data from

identification).

7. With regard to sending political marketing, there is a special legal regime applicable whenever the sending is made, by any means (e.g., email, SMS, MMS, telephone), in the context of electronic communications⁸ 9. It follows that it can only be sent political marketing with explicit, informed, free and specific consent to the political marketing purpose of the data subject.

In other words, before sending marketing, the party, the group of voting citizens or the candidate must certify that:

7 The electoral process abroad obeys its own rules, which take into account the absence of voters from National territory. Specifically, the addresses of the Portuguese residing there are indicated in the voter registration (which is not the case with voters residing in national territory), with the political parties legitimacy to obtain copies of those notebooks exclusively for the purpose of promotion and implementation of the electoral campaign – (and only at this stage, such data must be later by them deleted) – cf. 3 to 5 of article 54 of Law no. 14/79, of 16 May, as amended by Organic Law no. 3/2018, of August 17th.

8 It is the privacy protection regime in the electronic communications sector, approved by Law n.º 41/2004, of 18 August, amended by Law no. 46/2012, of 29 August, in transposition of the European directive.

9 It should be noted that telephone calls are also included in the same regime, since the law national does not exclude them. In fact, telephone calls (automated or not) can be even more intrusive and disturbing the right to rest than other forms of communication, by their nature and considering the time at which they are normally carried out.

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i.

Obtained contact, or contact and identification data, directly from the holders and, on that occasion, he consented unequivocally, and through a

positive act, in its use to send political marketing; or

ii.

Said data were provided to you by third parties (e.g. companies) and that these

have proof that the data subjects have given unequivocal consent

and specific for the purpose of political marketing, therefore not enough a

generic consent for marketing.

It is reiterated that compliance with the principles and rules of protection of personal data,

particularly in the context of electoral campaigns and electoral acts, it is essential to

protect democracy. And it is a means of preserving citizens' trust in the State.

of Law and the integrity of the acts of election of its representatives.

Approved at the plenary session of the National Data Protection Commission on March 25, 2019.

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