CMPB)

National Data Protection Commission

DELIBERATION/2022/1040

1. The National Data Protection Commission (CNPD) prepared, on September 14, 2022,

deliberation project, in which the accused Municipality of Setúbal was charged with the practice, in

material authorship, in consummate form and with negligence,

i. of an offence, p. and p. by subparagraph f) of paragraph 1 of article 5, in conjunction with subparagraph

a) paragraph 5 of article 83, both of the RGPD, sanctioned with a fine, up to a maximum amount of € 20,000,000.00 each;

ii. of an offence, p. and p. by paragraph e) of paragraph 1 of article 5, in conjunction with paragraph a) of paragraph 5 of article 83, both of the RGPD, sanctioned with a fine, up to a maximum amount of € 20,000,000, 00 each;

iii. of an offence, p. and p. by paragraphs 1 and 2 of article 13, in conjunction with paragraph b) of paragraph 5 of article 83, both of the RGPD, sanctioned with a fine, up to a maximum amount of € 20,000,000.00;

iv. of an offence, p. and p. by paragraphs 1 and 7 of article 37 of the RGPD, in conjunction with paragraph a) of paragraph 4 of article 83, both of the RGPD, sanctioned with a fine, up to a maximum amount of € 10,000,000 ,00; It is

2. Once the defendant was notified of the content of the said project and, pursuant to the provisions of article 50 of Decree-Law no. 433/82, of October 27, to present his defense, he came, through an Illustrious Representative to claim , in short:

a) The purposelessness of the Deliberation Project, based, according to the Defendant, on a "factual, legal and news miscellaneous" and in which it is unintelligible “the connection between an expressive set of facts and the normative scope of the sanctions indicated as potentially applicable;

b) The invalidity of the procedure, due to the violation of a substantial right: article 39, paragraph 3 of the LERGPD;

c) The invalidity of the non-application of the provisions of articles 37, paragraph 2 and 39, paragraph 1 of the LERGPD;

d) The existence of errors and incompleteness in the matter of fact considered;

e) The need to take into account relevant facts that were not included in the draft resolution.

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt

r

f) It also requested waiver of the imposition of a fine pursuant to paragraph 3 of article 44 of Law no. 58/2019, of 8 August.

3. The defendant did not deny, did not contradict, nor did he even contradict any element of the draft decision regarding the lack of designation of the Municipality's data protection officer, at the time of the facts.

4. In addition, the defendant protested to attach 19 (nineteen) documents, which, to date, has not occurred.

I. About the request for waiver of the fine

5. The defendant requested the waiver of fines, pursuant to paragraph 3 of article 44 of Law no. 58/2019, of 8 August. However, paragraph 2 of that article 44 defines the period of “three years from the entry into force of this law” as the period of time during which public entities have the option of requesting the waiver of fines, so that norm ceased to produce effects on the 9th of August.

6. As an argument to support the maintenance of the prerogative described above, it pointed to "the suspension, and further extension, of the deadlines operated by the commonly designated COVID-19 legislation".

7. It would be up to the defendant to better densify to what extent the legislation approved during the pandemic can be seen as enabling the conclusion offered. It is difficult to see how an objectively fixed period for an exceptional prerogative of public entities to be in force, in the concrete context of an administrative offense proceeding in which their hypothetical condemnation to pay a fine is configured as possible, be extended to a moment when that this process results in a note of illegality and the period provided for by law for the exercise of that prerogative has already passed.

8. It should be noted that the ratio of the extensions included in the set of legislation that the defendant calls "COVID legislation", were instituted precisely to deal with constraints arising from the pandemic context, something that is clearly not applicable to the present case, which neither directly nor indirectly was it affected by the pandemic.

9. Although the understanding was different regarding the impossibility of, at the present time, applying the regime laid down in paragraph 2 of article 44 of the LEGPD, the CNPD interprets the regime provided therein in the sense that it confers discretionary power on it to assess, in view of the specific infringement, whether it would be justified to depart from the general rule of imposing a financial penalty on a specific public body, as controller (or a processor), taking into account the different interests and rights involved.

10. Now, taking into account the seriousness of the infractions, the balance of the rights of the data subjects and the public interests that the violated legal norms seek to safeguard, as will be explained below, the CNPD's decision would always be not to waive the fine in this case concrete.

11. Thus, any of the arguments explained above share the decision not to waive the fine.

II. appreciation

i. Regarding the alleged lack of purpose of the Draft Resolution

12. Contrary to what the defendant asserts, the present administrative offense case is not marked by the media attention that undeniably surrounded all the issues connected with it.

13. The mere fact that this is a matter to which the media devoted extensive and intense attention did not condition or enhance any factual valuation that the CNPD came to express in the Draft Deliberation.

14. Moreover, the references dedicated to the fact that the media gave public echo of the matter exist only to frame the impulse that led to the opening of the investigation process, since the "news" of the potential violation of GDPR rules was made known in these same media.

15. The facts contained in the draft deliberation provide the basic context that allows the defendant to understand the meaning and scope of the CNPD's action, even if part of them serve to exclude what is not and cannot be the object of pronouncement by the control authority national data protection policy.

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976832

geral@cnpd.pt

www.cnpd.pt

16. The subjective analysis of the defendant is therefore not supported in the context of the facts given as established and in the imputations attributed to him, which refer exclusively to the violations that, after due investigation, were found.

17. For this reason, references to citizens about their conduct and

behaviors are affected by any mention of their Russian citizenship, but are based on the factuality obtained from the investigations carried out during the investigation of the process.

ii. As for the invalidity of the procedure, for violation of a substantive right: Article 39, paragraph 3, as well as Article 37, paragraph 2 and 39, paragraph 1 of the LERGPD

18. The Defendant disputes that the CNPD can exclude the application of article 39, paragraph 3 of Law no. 58/2019, of August 8, as such rule constitutes a substantial right that cannot be excluded by the CNPD .

19. This is a legal understanding different from that of the Commission and which, as repeatedly explained, cannot be accepted.

20. Indeed, Regulation (EU) 2016/679, of April 27, 2016 - General Regulation on Data Protection (RGPD), like any regulation emanating from the European Union, is general in nature. It is binding in its entirety and directly applicable in all Member States. (Article 288 of the Treaty on the Functioning of the European Union).

21. Such primal characteristics of regulations cannot be removed by national legislation, as referred to in the constant case law of the Court of Justice of the European Union and contained in Deliberation 2019/494 of the CNPD.

22. Recently, the Constitutional Court, in judgment No. 422/2020, of July 15, clarified any doubt that might remain about the limits (or lack thereof) of application of the principle of the primacy of EU law, thus deciding " Pursuant to article 8, paragraph 4,

of the CRP, the Constitutional Court can only assess and refuse the application of a DUE rule if it is incompatible with a fundamental principle of the democratic rule of law which, within its own scope of the DUE - including, therefore, the jurisprudence of the TJUE - does not enjoy a parametric value materially equivalent to that which is recognized in the Constitution, since such a principle is necessarily imposed on the very convention of the "[...} exercise, in common in cooperation or

r

by the institutions of the Union, of the powers necessary for the construction and deepening of the European Union". On the contrary, whenever the assessment of a DUE norm is at stake in the light of a (fundamental) principle of the democratic rule of law which, within the scope of the DUE , enjoys a parametric value materially equivalent to that recognized in the Portuguese Constitution, functionally ensured by the TJUE (according to the contentious means provided for in the DUE), the Constitutional Court refrains from assessing the compatibility of that rule with the Constitution."

23. The CNPD understands that, in terms of the applicability of the RGPD and, in particular, the direct applicability of its sanctioning regime, the existing principles within the scope of the DUE, enjoy a parametric value materially equivalent to that recognized in the Portuguese Constitution.

24. As noted by Paulo Pinto de Albuquerque (in his "Commentary on the General Regime of Offenses in the light of the Constitution of the Republic and the European Convention on Human Rights"), "According to the jurisprudence of the TJUE, the fundamental rights of the sanctioning process of the European Union legal order are: (1) the right to a hearing before the administrative authority; (2) the right to non-self-incrimination, (3) the right to state reasons for decisions, (4) the right to access to documents, (5) the right to legal representation, which includes the right to confidentiality of communication between lawyer and client, and (6) the right of access to an independent and impartial tribunal within a reasonable time" (cf. note 28 to Article 1).

25. These rights "can be invoked not only before European judicial bodies, but also before national judicial bodies, when these have competence to apply European Union law..." (cf. note 31 ibidem).

26. What the defendant seems to advocate is not so much the compatibility of national legislation with the provisions of the GDPR, but rather the priority of an internal regime that effectively distances EU law, creating a step prior to its application, never intended or authorized by the European legislator.

27. However, to consider that a condition that national law imposes as indispensable to the application of EU law (through a regulation that, as mentioned, is mandatory in all its

Av. D. Carlos 1,134, Io T (+351) 213 928 400

1200-651 Lisboa F (+351) 213 976 832

geral@cnpcl.pt

www.cnpd.pt

elements and directly applicable in all Member States) does not create a space of disagreement and inequality in the application of this regime in the various countries of the Union, it cannot be seen as a pertinent argument.

28. Accepting this argument would mean allowing any EU country to create similar regimes for any Union regulation, preventing its direct applicability.

29. By pointing to the existence of a substantive right that is denied him, the Defendant refers us precisely to the field of application of EU law, to the consideration of the effects of the principle of primacy and to the field of application of the most recent constitutional jurisprudence, which, as we have seen, does not guarantee its interpretation.

30. Furthermore, reference is made to the content of Deliberation 2019/494 of the CNPD, in particular on the binding of this Commission to the principle of loyal cooperation, provided for in paragraph 3 of article 4 of the Treaty on European Union,

31. as well as the manifest inadequacy of this rule in comparison with the consistency mechanism provided for in the RGPD and, furthermore,

32. on the fact that administrative entities are also obliged to disregard national rules that are contrary to European Union law.

33. Remember that all these principles are expressly provided for in the Treaties.

34. And that CNPD deliberation 2019/494 was published precisely with the intention of protecting those targeted by national legislation, in order to increase legal certainty regarding the decisions that were to be handed down.

35. In addition to the fact that, in concrete cases, with a final decision and publicly available (cf. https://www.cnpd.pt/comunicacao-publica/noticias/cnpd-aplica-sancao-ao-municipio-de-lisboa/ the CNPD reaffirmed this understanding.

36. It is also evident that the argument according to which the CNPD "annihilated a right" cannot be considered admissible, since such a right (to be so) never existed.

37. And, for all of the above, it is incomprehensible to charge that the CNPD "does nothing to ensure that the mechanisms of primacy, intended to ensure the modification of the regime (if necessary), with respect for the rules of legal certainty, are triggered ".

38. Regarding the non-application of paragraph 2 of article 37 and paragraph 2 of article 39, the arguments set out above and what appears in point 5 of Deliberation 2019/494 already mentioned are also valid.

iii. Regarding the existence of errors and incompleteness in the matter of fact considered

39. The allegation of any lack of instruction on the part of the CNPD is incomprehensible.

40. In effect, and as Augusto Silva Dias teaches, "The instruction begins with an investigation aimed at collecting evidence, but it does not have to be that way" (in Direito das Contraordinações, Almedina publisher, reprint, 2020, p. 215).

41. In any case, the CNPD not only investigated the case, gathering the elements necessary for decision-making, but also carried out investigations.

42. Furthermore, the reports attached to the file give a good note of this and the evidence referred to in the draft determination confirms this concern.

43. At no time was any factual element in favor of the Municipality denied or postponed.

44. Since it is up to, in the final decision, to duly consider all these elements and circumstances, which will be done in parts V and VI of this determination.

45. It should be remembered, again quoting Augusto Silva Dias, that "the note of illegality does not yet constitute the final decision of the administrative authority" although it "proceeds, however, to a certain delimitation of the object of the process in

the administrative phase" (p. 225 of the ob. cit.).

46.Now, the elements that must be made known to the defendant are those already well known and established in the jurisprudence: "communication of the imputed facts with the "sequential, narratively oriented and spatio-temporally detailed description of the elements essential to the singularization of the behavior administratively relevant and this description must contemplate the objective characterization and

Av. D. Carlos 1,134, Io

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976832

geral@cnpd.pt

www.cnpd.pt

subjective, of the action or omission whose attribution is in question (judgment of TC No. 99/2009). Said in the formula used by the STE record n.° 1 / 2003, the rights of defense and hearing ensured within the scope of the administrative offense procedure will imply, in summary, that the defendant is given prior knowledge of "all aspects relevant to the decision, in matters of fact and law'." (note 4 to article 50, from the aforementioned work by Paulo Pinto de Albuquerque).

47. Which, s.m.o., was implemented in the deliberation project.

48. As for the allegation that the CNPD disregarded the “collaborative nature of public intervention in the Municipality", as well as “the delegation of tasks and the existence of an inter-administrative contractual arrangement (albeit not formalized), in which the Municipality's task, especially with regard to data collection, it was essentially an instrumental (parallel or propaedeutic) task of the absolutely necessary intervention of other public entities..."

49. It is not a question of disregarding any degree of interadministration or joint action with other public entities and, remember, private ones, with whom the City Council of Setúbal intended to promote collaborative actions.

50. What deserves censure is the performance of the Municipality, as responsible for the treatment, in the strict measure of its

responsibilities, which includes, as required by law, the provision of essential information about the treatment.

51. The Municipality itself developed, through LIMAR, its own attendance forms that it was responsible for maintaining and managing autonomously.

52. The intervention of ^^^^^ is also not censured as a member of the association with which the Municipality established the partnership, but rather due to the fact that this partnership was not duly formalized in order to frame its participation in the context of LIMAR .

53. Furthermore, it is important to clarify for the defendant that the fact of establishing a partnership with a third party does not automatically mean that it ceases to be regarded as a third party. Your qualification will depend on the degree and function of your performance in terms of processing personal data.

54. What is, therefore, objectionable is that there is no minimum care required, either from a formal point of view - with the subcontracting agreement or contract - or from a substantive point of view, with the implementation of minimum control measures of the access by persons outside the Municipality's services to equipment containing personal data.

55. Especially when these data relate to particularly vulnerable data subjects such as refugees.

56. The CNPD did not comment on the number and quality of data that refugees would have to provide in order to obtain support, so it becomes redundant to argue, as the defendant does, that this information was essential.

57. It should be noted that the defendant never denies or justifies the reason why excel files were used for the management and conservation of the personal information of the refugees who came to LIMAR.

58. As for the existence of training, what is alleged by the defendant in points 106 to 109 is accepted, where the two training courses provided (albeit reduced), the target audience (albeit imitated), their duration and date of occurrence, even though the supporting documents for these trainings have not, to date, been received by the CNPD services.

59. However, it should be noted the manifest lack of training aimed at a relatively limited universe of employees and given after the RGPD came into application and long after its entry into force, in this case in September 2018 and April of 2019.

60. The facts on this specific point will therefore be corrected.

61. Regarding the appointment of the Data Protection Officer, it is confirmed that he has already been appointed, albeit only on September 22, 2022.

62. Defends the defendant that the declaration of consent was also, however, altered, which is admitted, but that, in view of its non-addition to the file or insertion in the body of the defence, cannot be disregarded.

Av. D. Carlos 1,134,10

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt

iv. About the objective elements of the types of offense

63. The defendant understands that the CNPD should choose to frame the violations of the principle of paragraph f) of paragraph 1 of article 5 in the specific provisions of articles 28 and 32 of the RGPD.

64. It happens, however, that Article 28 establishes the conditions under which a subcontracting relationship must occur, not dealing with punishing those in which the formalization did not occur.

65. Likewise, Article 32 defines a set of specific, albeit not exhaustive, security measures to be implemented to guarantee the safety of treatments.

66. What the CNPD censured in the deliberation project was a set of procedures to which the minimum security measures were not applied, revealing a reprehensible behavior not due to the inadequacy of concrete measures eventually envisaged, but rather due to an action consistent and consistent disrespect for the principle enshrined in Article 5(1)(f) of the GDPR

v. On violations of Article 13

67. The Municipality of Setúbal argued that the collection of data it carried out was merely instrumental and dependent on the instructions or definitions of third parties.

68. Therefore, it argues that it cannot be said that the person responsible for processing or the recipients of the data was not

known.

69. It is a fact that, in several cases, the Municipality collected information framed in forms from third parties.

70. What the CNPD censures is not this reality, but rather the fact that, by creating a specific service to support refugees, the Municipal Refugee Support Line (LIMAR), in this context, it did not inform the data subjects of various elements provided for in paragraphs 1 and 2 of article 13 of the RGPD, as is your obligation, regardless of the context in which the data collection is carried out.

71. Assuming that the context of the emergency in which it was found could place the availability of these elements as a non-priority, it will always be convenient to frame the emergency within the existing preparation framework.

72. A framework that, even so, allowed the prior existence of meetings of the Local Council of Social Action of Setúbal - CLASS and the definition of action procedures that could and should have included the matter of data protection in its scope.

73. It is precisely in the scope of support for data subjects in a situation of particular vulnerability and in an atypical context, as was the case, that the protection of fundamental rights such as the protection of personal data becomes more urgent.

74. Regarding the lack of mention of the Data Protection Officer in the information to be provided, the argument is granted to the defendant that, not existing, he could not be communicated, but this does not relieve him of the obligation to designate, nor does it contribute to the mitigation of that original breach.

75. An obligation that bound him since May 25, 2018, but whose designation process only started on May 3 of the present.

76. Obligation, moreover, reinforced by Law No. 58/2019, of August 8, which expressly repeats the imperative nature of the designation of the EPD.

77. It is still not possible to accept the argument that the "lapse" in mentioning the data protection legislation in force in the declaration of consent is excusable in view of the context of "systematized implementation of the RGPD" that would be in progress.

78. Firstly, because the defendant failed to demonstrate that there was any systematized implementation in progress and,

79. Second, because even if there were such implementation, it would always be late and, therefore, of little relevance to the

verified fact.

80. It should be noted that Regulation 2016/679, of April 27, 2016, entered into force on May 24, 2016, with its application being postponed to May 25, 2018 (cf. no. 2 of Article 99).

Av. D. Carlos 1,134,10

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt

81. At most, it could even serve as an aggravating factor, as it becomes less excusable that an organization that is implementing the RGPD is not concerned with updating basic information such as that provided to data subjects.

82. As described in point 64, also regarding the violation of the principle enshrined in Article 5(1)(e) and Article 13(2)(a) of the RGPD, there is a precedence relationship, so that the breach of the mentioned duty of information will not be revealed in the final decision.

83. Still with regard to the definition of time limits for the conservation of information, the argument raised by the Defendant of the urgency and emergency of the situation experienced at the time is accepted without, however, disregarding the possibility of, at least, establishing minimum guidelines for the conservation of information.

84. Finally, the mention of the non-existence of an impact assessment on data protection regarding the treatments carried out in the context of LIMAR is removed, not because of the uselessness of carrying out such an assessment, but because it is not legally mandatory for it to be included in this specific treatment.

85. With the elements contained in the file, of interest for the decision, we consider the following to be proven:

III. Facts

86. On April 29, 2022, the newspaper Expresso published the headline "Ukrainians received in CDU Chamber by pro-Putin Russians" (cf. document attached to the file).

87. It contained testimonies of refugees from Ukraine, displaced in Portugal as a result of the ongoing military conflict between that country and the Russian Federation.

88. Such testimonies, offered anonymously, showed that, at the Setúbal City Council, Russian citizens, on the pretext of providing assistance to Ukrainian refugees who arrived there to ask for support, asked the latter questions about the whereabouts of their relatives as well as what they had been left to do in Ukraine.

89. The Municipality of Setúbal, legal person, with NIPC 510294104 has its headquarters at Praça do Bocage, 2901-866 Setúbal.

90. The aforementioned news also portrayed the execution of copies of documents belonging to the refugees in the presence of the said Russian citizens.

91. The citizens expressly mentioned in the news werel

92. This news and similar ones were published in various media (cf. news attached to the file).

93. has Portuguese nationality and is a member of the Association of Immigrants from Eastern Countries - EDINSTVO.

94. also has Portuguese nationality and is president of the aforementioned

Association.

95. Worker (lawyer) at Setúbal City Council.

96. The Association of Immigrants from Eastern Countries EDINSTVO, a legal person with NIPC 506204367 and headquarters at Rua de São Tomé e Príncipe, 18 r/c Dto., 2900-087 Setúbal, is dedicated to supporting immigrants from the countries from the east, but also from Brazil, promoting initiatives to aid integration into the community and of a solidary, cultural and recreational nature.

97. EDINSTVO was founded in 2002 by

98. Since that date, several initiatives have been promoted within the scope of the Association, being included in the Local

Council of Social Action of Setúbal - CLASS (cf. declarations and minutes of the CLASS meeting of March 11, 2022, attached to the Report of Inspection to CMS, as Annex VIII - pages 2 to 7 and Annex VI).

99. In 2004, the Municipality of Setúbal entered into a protocol with EDINSTVO for the placement of two employees of the latter to join the team of the "SEI - Setúbal Ethnias and Immigration" (SEI) Office, with the objective of guaranteeing assistance, advice and help to immigrants that they would present themselves.

100. The SEI is part of the CMS Department of Culture, Sports, Social Rights, Health and Youth.

101.0 protocol was successively renewed, having remained in force until May 2022.

Av. D. Carlos 1,134,10 T (+351) 213 928 400

1200-651 Lisboa F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt

102. There is no provision in the protocol on the protection of personal data or that regulates the responsibilities of the parties in the management of this type of information.

103. CMS, in view of the imminent arrival of a considerable flow of Ukrainian refugees, decided to create a Municipal Refugee Support Line (LIMAR), in March 2022, with telephone and face-to-face assistance.

104. The Municipality of Setúbal has thus assumed the capacity of being responsible for the processing of information processed within the scope of the services provided through LIMAR.

105. In order for LIMAR to be able to provide the service for which it was set up, two rooms were made available in the Mercado do Livramento building, a municipal public building, located in Setúbal, one for customer service and the other for support and archiving of the documental record.

106. The support and archive room had its own cabinets for storing documentation and was only accessed by LIMAR members.

107. The CMS team created specific forms - "attendance" and "telephone answer" forms - (cf. Annexes III and IV of the CMS Inspection Report), to collect the elements necessary for the support required under LIMAR .

108. These forms contained various personal information about the refugees, from name, address, date of birth, marital status,

contacts, household, information on identification documents, on the support network (identification of places and of the people with whom they could stay and their respective households), information on the period in which they could stay with the people in that support network and identification of the needs of these people in terms of accommodation, essential goods, food, health, education, equipment for childhood, employment, social responses, among others, in addition to the description of the concrete situation (cf. Annexes III and IV of the CMS Inspection Report).

109. Together with the attendance forms, the registration form in the Portuguese Language of Reception courses - PLA, from the Institute of Employment and Professional Training (IEFP), could be filled out for refugees who expressed a desire to learn the Portuguese language, and it was associated with a copy of the biographical page of the passport or another identification document.

110. The IEFP registration forms contain, among others, the following tables relating to the applicants' personal information: full name, address, date of birth, marital status, gender, mobile phone number, country of origin, document number of identification, educational qualifications, profession in the country of origin, current function or profession, employment status in Portugal (cfr. Annex VII of the CMS Inspection Report).

111. The service forms were handwritten, and the processes were filed on paper. A digital record of the collected data was also created, on the "Microsoft" platform, in Excel format - "LIMAR_BASE.DADOS.xlxs" file, which requires a password for access (see Annex XII of the CMS Inspection Report).

112. The file contained the attendance form, the Temporary Protection Certificate1, a copy of the identification documents, birth certificates of minors, registration form in the Portuguese Receiving Language courses - PLA, of the IEFP, and proof of communications to the various public services for the necessary support, namely for the IEFP for looking for a job, for Social Security in Setúbal, for receiving the Social Insertion Income and other benefits, for the Grouping of Health Centers in Setúbal and for the Hospital and for other public and private entities that guarantee the requested support, namely food, clothing and other essential goods.

113. The file also contained the "Declaration of Consent", regarding the processing of personal data provided to CMS in the context of support for refugees, in which, in the part relating to the communication of data to third parties, it is stated:"[...] I further authorize that the collected data records may be shared with other services or entities in order to forward specific responses or provide social support adjusted to the situation, with the guarantees of privacy and non-discrimination.[...]" (see Annex III - page 4 of the CMS Inspection Report).

114. The text of the declaration was written in Portuguese, Ukrainian and Russian.

115. During the investigations, the "A72" process, created by the team, was randomly checked

"FN / YK" with cover sheet "Attendance Record" and

1 Issued following the online completion, in principle by the interested party, of the Aliens and Borders Service form available at https://sefforukraine.sef.ot. Under legal terms, copies (of biographical data) of identification documents and, in the case of minors, birth certificates (see Inspection Report to SEF) must be submitted.

Av. D. Carlos 1,134,1°

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

vmw.cnpd.pt

which contained a copy of the passport (biographical data sheet), a copy of the temporary protection certificate and copies of the emails sent to the entities for the necessary support, as well as the declaration of consent.

116. At the top of each service process are the initials of the people who carried out the service, as follows: “-7YK" or 'VIK", where it is found the initials of the Municipality's social service technician.

117. The procedures for managing processes relating to refugees and their forwarding to the competent authorities were the subject of discussion and fixation at a meeting of the CLASS network, chaired by the Councilor for Culture, Sports, Social

Rights, Health and Youth of the City Council de Setúbal,^^^^|(cfr. Annex VI of the CMS Inspection Report).

118. The matter relating to the PLA courses was mentioned, but the transport of registration forms to the IEFP was not fixed or advised (see Annex VI of the CMS Inspection Report).

119. Beforehand, an email model was agreed to be used for situations of precariousness or need for support - employment, social care and support, health - which did not contemplate the situation of refugees who intended to learn Portuguese as a host language (cfr. Annex V - page 3).

120. LIMAR operated, from March 2022, using SEI employees.

121. The CMS service teams were made up of two employees, a social worker and a translator, who in this case were

122. From the 11th to the 28th of March, ^^^^^^ was absent due to illness.

123. During this period, he only^^^^^| collaborated in the services involving translation (cf. Annex VIII - pages 2 to 4 of the CMS Inspection Report).

124.^^^^^'s participation in the team was not based on any formal or contractual decision, although he did not perform any function in the Municipality.

125. Provided support within the scope of LIMAR, helping with the translation and, at the request of the refugees, filling in documentation for the courses “Portuguese Language of

f

Reception - PLA" (learning the Portuguese language) of the IEFP and SEF forms to obtain the temporary protection title, as a volunteer (cf. Annex VIII - pages 2 to 4 of the CMS Inspection Report).

126. Scanned and uploaded to the SEF form the passport and birth certificate of the children for whom aid was requested by the refugees themselves (cf. Annex VIII - pages 2 to 4 of the CMS Inspection Report).

127. Organized and transported enrollment forms in the PLA courses to the IEFP (cf. Annex VIII - pages 1 to 7 of the Inspection Report to the CMS and Inspection Report to the IEFP).

128. It was not possible to determine the exact number of enrollment forms for the PLA courses carried by

~29.^^^^Jprovided support as an interpreter in the initial information provided to the refugees, regarding social support and payment procedures for transport and food allowances and training grants, at the facilities of the IEFP in Setúbal (cfr. electronic communication from the Director of the IEFP of Setúbal joins the file).

130. He had access to LIMAR's computer equipment, using the woman's credentials, enabling him to use the CMS's computer and laptop to access the web portals where he would insert documents (cf. declarations attached to the file).

131 .^^^^^^ gave the access credentials to such equipment to her husband (cf. declarations attached to the file).

132. collaborated as an interpreter in the context of welcoming refugees and did not record data in internal processes (cf. Annex VIII - pages 5 to 7 of the CMS Inspection Report).

133. This collaboration ended on April 7, 2022 (cfr. Annex VIII - page 1 of the CMS Inspection Report).

134. On May 3, 2022, the Mayor of Setúbal, through Order No. 153/2022, designated a worker from the Municipality who also held management positions as EPD.

Av. D. Carlos 1,134,1°

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt

135. As doubts arose about the adequacy of this designation, the CNPD was asked, on May 10, 2022, to pronounce on its conformity.

136. Subsequently, a public procurement procedure was launched to fill the post of Data Protection Officer for the Municipality of Setúbal.

137. This tender resulted in the appointment of the new Data Protection Officer, on September 22, 2022.

138. It was found that there are no policies or guidelines in the CMS for the secure management of information containing personal data, and the employees of the municipality are not informed about the procedures to be adopted.

139. The exception to the lack of said policies and/or guidelines is an email from the IT Division on the security of computer,

email and internet access passwords, which the municipality made available to the CNPD during the inspection (cfr. Annex IX of the CMS Inspection Report)).

140. No Data Protection Impact Assessment has been carried out, despite the fact that refugees (who are equivalent to asylum seekers) are considered vulnerable persons according to the Guidelines on Data Protection Impact Assessments of the European Committee for Data Protection (cf. criterion 7 for assessing the need for an DPIA, pp. 12 of the Guidelines2).

141. There are no defined retention periods for the information collected by LIMAR.

142. At the time of collection, data subjects (refugees) are not provided with information on who is responsible for the treatment, the purposes of the treatment, the recipients or categories of recipients of personal data, the rights of data subjects, the right to lodge a complaint with a supervisory authority.

143. The Attendance Register contains a "Declaration of Consent" with the following content: I declare that I consent to the information and data provided by me to the Setúbal City Council, within the scope of the Municipal Refugee Support Line, being processed by automated means or others, ensuring the due guarantees of privacy and non-disclosure

2 Available at https://ec.europa.en/newsroom/article29/items/611236/en.

discrimination. I further authorize that the records and data collected can be shared with other services and entities in order to forward specific responses or provide social support adjusted to the situation, with the guarantees of privacy and non-discrimination. I am also aware that the confidentiality and security of the personal data provided by me will be ensured, being able to access and/or rectify them whenever justified, under the terms of Law No. 67/98, of October 26, in version of Law No. 103/2015, of August 24, and that false statements are punishable by law.

144. That statement contains no reference to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, on the protection of natural persons with regard to the processing of personal data and the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation).

145. By allowing people outside municipal services to access computer equipment used to process personal data without a

specific access profile and, as well as by granting them access to information on refugees supported through LIMAR, contained in the forms of PLA courses, transporting them outside the Municipality's facilities without previously assuming any formal commitment and without defining any guidance on the management and security of the information thus accessed and transported, the defendant did not act with the care to which he is obliged, and that he was able, representing as possible that he was acting against the law.

146. By using Excel files for the management and conservation of information relating to a set of vulnerable holders (refugees), files that do not contain audit records, not allowing to know who accessed them, when and what operations they carried out, the defendant did not act with the care to which he is obliged, and of which he was capable, representing as possible that he was acting against the law.

147.By not defining the retention periods for the information collected through LIMAR, keeping the information preserved beyond what was necessary, the defendant did not act with the care to which he was obliged, and of which he was capable, representing as possible that he was acting against the law.

Av. D. Carlos 1,134,1°

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

wvw.cnpd.pt

148.By not providing the mandatory information on the processing of personal data in a concise, transparent, intelligible and easily accessible manner, the defendant did not act with the care to which he is obliged, and of which he was capable, representing as possible that he was act against the law.

149. By not appointing the Data Protection Officer, the accused did not act with the care to which he was obliged, and of which he was capable, representing as possible that he was acting against the law.

150. The defendant always acted voluntarily and conscious of the acts performed.

IV. evidentiary conviction

151. The facts given as proven were based on a critical analysis of the evidence produced, both oral and documentary, as well as the inspection reports that the CNPD carried out at the ACM, SEF, IEFP de Setúbal and CMS and the testimonies collected.

Of the latter, the following stand out (cf. declaration records attached to the CMS Inspection Report):

The. The statements that he denied having copied the documents of

identification of refugees for the CMS internal process;

B. Dc^^^^^^who confirmed having given her husband access to computer equipment;

w. From^^^^^^|who denied having shared personal data of refugees with third parties;

d. Of^^^^^fwho denies having copied for himself or for third parties, as well as rejects having made available to entities other than those indicated by the Municipality, the documentation relating to the refugees to which he had access;

It is. From the Head of the Division of Social Rights and Health at CMS,^^^^^^^^|, who stated that he maintained collaboration as an interpreter in the context of the

reception of refugees and which did not record data in internal processes;

f. And that, bearing in mind the "direct articulation" of^^^^^|with the IEFP - CE Setúbal, which was due to the relationship that he established with the IEFP delegation as leader of the EDINSTVO association and trainer, it was he who took enrollments and copies of identification documents for attending PLA courses;

g. Finally, he stated that he had not received any complaints about the care given to refugees;

what

From the president of the Association of Ukrainians in Portugal, he declared that he had not received any complaints from

refugees regarding the care provided in Setúbal;

i. And not being aware of any case of collecting or sending data from Ukrainian refugees to Russia, even if he admitted the existence of that risk.

V. Law

152. The CNPD is competent pursuant to paragraph 2 of article 58 of Regulation (EU) 2016/679, of April 27, 2016 - General Regulation on Data Protection (RGPD), in conjunction with article 3 .°, paragraph 2 of article 4, and paragraph b) of paragraph 1 of article 6, all of Law no. 58/2019, of August 8 (LERGPD).

i. Violation of the integrity/confidentiality principle (paragraph f) of Article 5(1) of the RGPD)

153. Article 5(1) of the GDPR requires that personal data be "Processed in a manner that guarantees their security, including protection against unauthorized or unlawful processing and against their loss, accidental destruction or damage, adopting appropriate technical or organizational measures ("integrity and confidentiality")".

154. However, CMS has not defined organizational measures to safeguard information, policies or guidelines for the secure management of information, nor formally defined any commitment

Av. D. Carlos 1,134, Io

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

gerai@cnpcl.pt

www.cnpcl.pt

with EDVINSTO to regulate the access and transport of information containing personal data.

155.Moreover, by enabling people outside the Municipality's services to use equipment, without a specific profile, where personal data entrusted to the Municipality are housed without any contract or formal agreement containing the obligations of the parties in terms of data protection personal data, the Municipality of Setúbal violated the principle of integrity and confidentiality.

156. Likewise, by keeping information containing personal data about refugees in Excel files, even with access conditioned by a password, the Municipality of Setúbal violated this same principle, given that the conservation of personal data in an unstructured way, in files whose traceability of accesses and changes is manifestly reduced or non-existent, represents, in itself, a risk to its security, integrity and confidentiality.

ii. Violation of the principle of limitation of conservation (paragraph e) of paragraph 1 of article 5 of the RGPD)

157. Article 5(1)(e) of the RGPD requires that personal data be “Kept in a way that allows the identification of data subjects only for the period necessary for the purposes for which they are treaties; personal data may be kept for longer periods, provided that they are processed exclusively for archival purposes in the public interest, or for scientific or historical research purposes or for statistical purposes, in accordance with Article 89(1) , subject to the application of the appropriate technical and organizational measures required by this Regulation, in order to safeguard the rights and freedoms of the data subject ('limitation of retention')".

158. The Municipality of Setúbal has not defined any retention period for personal data collected through the Municipal Refugee Support Line, nor has it delimited the criteria used to define these periods.

r

National Commission

Data Protection

iii. Violation of Article 13 of the GDPR

159.0 Recital 60 of the GDPR states that "The principles of fair and transparent treatment require that the data subject be informed of the data processing operation and its purposes.".

160. Article 12(1) of the GDPR provides that: "The controller shall take appropriate measures to provide the data subject with the information referred to in Articles 13 and 14 and any foreseen communication in articles 15 to 22 and 34 regarding processing, in a concise, transparent, intelligible and easily accessible manner, using clear and simple language, in particular when the Information is specifically addressed to children.".

161. Article 13(1) and (2) of the RGPD oblige data controllers to provide data subjects with a specific set of information, among which, relevant to the case, are the following:

"7. (...):

a) The identity and contact details of the controller and, where appropriate, of his representative;

(...)

c) 4 purposes of the treatment for which the personal data are intended, as well as the legal basis for the treatment;

(...)

e) Recipients or categories of recipients of personal data, if any;

(...)

two. (...):

(...)

b) The existence of the right to request the controller for access to personal data concerning him, as well as its rectification or erasure, and the limitation of treatment with regard to the data subject, or the right to object to the treatment, as well as the right to data portability;

Av. D. Carlos 1,134,10

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt

c) If the data processing is based on Article 6(1)(a) or Article 9(2)(a), the existence of the right to withdraw consent at any time , without compromising the lawfulness of the treatment carried out based on the previously given consent;

d) The right to lodge a complaint with a supervisory authority;

e) Whether or not the communication of personal data constitutes a legal or contractual obligation, or a necessary requirement to enter into a contract, as well as whether the holder is obliged to provide personal data and the possible consequences of not providing such data.

162. The statement of consent attached to the file collected with the intention of legitimizing the processing of personal data of

refugees does not present any element related to the information provided for in art. a), c) and e) of paragraph 1 and in subs. b), c), d) and e) of paragraph 2, all of article 13 of the RGPD.

163. In addition, the explicit legal basis refers to Law No. 67/98, of August 26, which is a legislation that has already been revoked, in which the provision of information provided for in art. c) of paragraph 1 of article 13,

164. And this is because the RGPD started to be applied on May 25, 2018, implicitly revoking a good part of the norms of that national diploma, with Law n.° 58/2019, of August 8, which entered into force on the day August 9, 2019, expressly revoking said Law No. 67/98, of August 26.

165. Equally defective is the delimitation of third parties to whom personal data may be transmitted, as provided for in art. e) of paragraph 1 of article 13. Even if it is admitted that the range of these recipients is extensive, the CMS cannot fail to recognize that at least the entities defined in the procedures established by the CLASS, at the meeting of March 11, 2022, could and should be made known to the holders of the data.

166. Finally, with regard to subparagraph b) of paragraph 2 of article 13 of the RGPD, reference is omitted to the possibility of requesting the deletion of data or limitation of processing, or even the possible possibility of requesting the right to portability.

167. With regard to this set of violations, the provisions of paragraph 5 of article 83 of the RGPD are relevant, where it is determined that “Breach of the provisions listed below is subject, in accordance with paragraph 2, to fines of up to EUR 20 000 000 or, in the case of a company, up to 4%

of its annual worldwide turnover corresponding to the previous financial year, whichever amount is higher: a) The basic principles of the processing, including the conditions of consent, when this is the basis for lawfulness, under the terms of articles 5 .th, 6th, 7th and 9th; b) The rights of data subjects under the terms of articles 12 to 22".

iv. Violation of Article 37(1) of the GDPR

168. In accordance with Article 37(1)(a) of the GDPR, "The controller and the processor designate a data protection officer whenever: The processing is carried out by an authority or body public, with the exception of the courts in the exercise of their

jurisdictional function".

169. The Municipality of Setúbal, by not appointing the Data Protection Officer, violated this provision.

170. Regarding the violation of article 37, it should be noted that paragraph 4 of article 83 provides as follows: “Breach of the provisions listed below is subject, in accordance with paragraph 2, to fines up to EUR 10 000 000 or, in the case of a company, up to 2% of its annual worldwide turnover for the previous financial year, whichever amount is higher: a) The obligations of the controller and processor pursuant to Articles 8, 11, 25 to 39 and 42 and 43".

171. The CNPD has powers of correction enshrined in Article 58(2) of the RGPD.

172. In addition, the principle of the primacy of European Union law, reflected in Article 288 of the Treaty on the Functioning of the European Union, implies that regulations are binding and directly applicable in all Member States, thereby ruling out any possibility of a «State [...], unilaterally, annul its effects through a legislative act that can be enforced against Community texts» - judgments of the TJUE Costa/ENEL, Proc. No. 6/64; Commission v Italian Republic, Proc. No. 39/72; Variola /Italian Finance Administration, Proc. No. 34/73.

Av. D. Carlos 1,134,1°

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpcl.pt

www.cnpd.pt

173. In this way, the CNPD and with the grounds best expressed in its Deliberation/2019/494, of September 3 (accessible at https://www.cnpd.pt/umbraco/surface/cnpdDecision/download/121704), decides not to apply, in the present case, by virtue of the principle of the primacy of European Union law, in conjunction with the provisions of article 8, paragraph 4, of the Constitution of the Portuguese Republic, the provisions of paragraph 2 of the Articles 37 and 38, as well as paragraphs 1 and 3 of Article 39, all of Law No. 58/2019, of August 8 (hereinafter LERGPD).

v. sanctions

174. It thus appears, in view of the facts found, that the defendant processed personal data without taking care to ensure the

conditions of security and integrity of the same, namely not establishing organizational measures and not signing binding commitments with entities and/or outsiders to municipal services who could access such personal data.

175. It is also verified that the defendant did not define the period of conservation of the information or the criteria used to establish it, as was his obligation, nor proceeded to erase the information containing personal data as soon as it ceased to be relevant to the intended purpose and should therefore be eliminated.

176. Furthermore, in light of the facts found, it appears that the defendant disrespected specific obligations imposed on him by the RGPD, namely those of providing information to data subjects.

177. Finally, it also appears that the defendant did not appoint the Data Protection Officer.

178. This means that the practice by the defendant of three foreseen and punishable offenses is sufficiently indicted,

i. the first by the combined provisions of paragraph f) of paragraph 1 of article 5, in terms of the inability to guarantee the security of treatments and the integrity and confidentiality of processed personal data, and of paragraph a) of paragraph 5 Article 83;

r

National Commission

Data Protection

ii. the second by the combined provisions of paragraph e) of paragraph 1 of article 5, for disrespecting the principle of limitation of conservation and paragraph a) of paragraph 5 of article 83,

179. the third by the combined provisions of paragraphs 1 and 2 of article 13 (Information to be provided when personal data are collected from the data subject) and paragraph b) of paragraph 5 of article 83. °,

180. all of the GDPR, each sanctioned with a fine of up to €20,000,000.00.

181.It is also verified, in the face of this same fact, that the practice by the defendant of an administrative offense foreseen and punishable by the combined provisions of paragraph 1 of article 37 is sufficiently indicted (designation of the person in charge of data protection) and paragraph a) of paragraph 4 of article 83,

182. all of the GDPR, sanctioned with a fine of up to €10,000,000.00.

183. All the violations listed here were committed negligently, willfully and knowingly. The CNPD has the powers of correction

provided for in article 58, paragraph 2, of the RGPD, namely, those of "Reprimanding the controller or the processor whenever the processing operations have violated the provisions of this regulation" (point b) of the cited article) and those of “Imposing a fine under the terms of article 83, in addition to or instead of the measures referred to in this number, depending on the circumstances of each case" (point /) of the cited article) .

184. Violations of the principle of limitation of conservation (point e) of paragraph 1 of article 5 of the RGPD) and of the duties to provide a set of information to the data subject when the collection is carried out directly by the controller (paragraphs 1 and 2 of article 13) must deserve a different degree of devaluation from the others, given the context of emergency that was observed at the height of the factuality that proves them. This is because the former are intrinsically linked to the refugee reception process, admitting, in this situation, an occasional, albeit always objectionable, negligence or lesser care in complying with rules that do not appear to be of equal priority compared to the concrete needs of providing for the rapid humanitarian response that was sought.

Av. D. Carlos 1,134,1o

1200-651 Lisbon

T(+351) 213 928400 F (+351) 213 976 832

geral@cnpd.pí

www.cnpd.pt

185. The other violations can be said differently, not because the context is different, but because their existence does not depend on and does not reflect the specific situation of response to the refugees' requests. Rather, they reveal a structural posture and behavior of the organization, which presents serious deficiencies in the assumption of critical principles of data protection that go beyond these specific treatments.

186. Pursuant to Article 83(1)(a) to k), the amount of the fine is determined according to the following criteria:

i. The nature, gravity and duration of the infringement taking into account the nature, scope or purpose of the data processing in question, as well as the number of data subjects affected and the level of damage suffered by them - It is considered that the violations committed by the defendant assume a significant degree of gravity, considering the universe of data subjects in question (especially vulnerable), whose concrete number was not determined, although the context in which they occurred, in

which the emergency humanitarian situation required more expeditious procedures, make their assessment less onerous. The violations detected regarding the principle of limitation of conservation took place in a relatively short period (about two months). The violation of the EPD designation lasted from May 25, 2018 to May 3, 2022, therefore deserving a greater degree of censorship, although it has been corrected.

ii. No damage caused to data subjects was detected;

iii. Only one of the offenses for which the defendant is accused is not punished by the most serious framework provided for in the RGPD (in this case, the violation of the obligation to designate the data protection officer);

iv. The intentional or negligent nature of the infraction - as explained above, the conduct related to the detected infractions is considered to be negligent;

v. The initiative taken by the person responsible for the treatment or by the subcontractor to mitigate the damage suffered by the data subjects - in this regard, the initiative of the defendant to appoint a data protection officer and to terminate the protocol with the association EDVINSTO, even if regarding the latter , the correction could have been limited to compliance with the provisions of Article 28 of the GDPR;

í

W_ __

National Data Protection Commission

Saw.

vii.

viii.

ix.

X.

xi.

The degree of responsibility of the person responsible for the treatment or the processor taking into account the technical or organizational measures implemented by him under the terms of articles 25 and 32 - the responsibility of the defendant is considered to be high for not having defined technical measures and organizational measures that are minimally sufficient and

suitable for the protection of personal information processed;

Any relevant infringements previously committed by the controller or processor - which do not occur;

The degree of cooperation with the supervisory authority, in order to remedy the infringement and mitigate its possible negative effects - which is considered adequate, given the availability of the required information and cooperation at all times during the investigation process;

The specific categories of personal data affected by the infringement - in this case, there is a vast amount of information about the refugees who went to LIMAR, providing the name, address, date of birth, marital status, contacts, household, information about the identification documents, about the support network (identification of the places and people with whom they could stay and their respective households), information about the period in which they could stay with the people in that support network and identification of the needs of these people in terms of accommodation, essential goods, food, health, education, childhood equipment, employment, social responses, among others, in addition to the description of the concrete situation. Among these data, there are some - those relating to health - which fall within the special categories of data provided for in Article 9(1) of the RGPD.

The way in which the supervisory authority became aware of the infringement, in particular whether the controller or processor notified it, and if so, to what extent they did so - which, in this case, resulted from the publication by the media of the suspicions of violations in terms of the processing of personal data of refugees, with no mitigating circumstances arising from this for the defendant;

Compliance with the measures referred to in article 58, paragraph 2, if they have previously been imposed on the controller or the

subcontractor in question regarding the same matter - not applying this criterion, since there were no previously determined corrective measures;

xiii. 0 compliance with codes of conduct approved under the terms of article 40 or with the certification procedure approved under the terms of article 42 - a criterion that also does not apply, as there is no code of conduct or certification procedure, under the terms indicated; It is

xiv. Any other aggravating or mitigating factor applicable to the circumstances of the case, in the light of point k) of paragraph 2 of article 83 of the RGPD, such as the financial benefits obtained or losses avoided, directly or indirectly, through the infringement - As a mitigating factor, the concrete context in which the violations took place will always have to be highlighted, at a time when the arrival of Ukrainian refugees in Portugal was intense and public and private institutions were faced with the urgency of responding to them.

xv. The financial situation of the Municipality will also be taken into account, reflected in the information provided in points 184 to 186 of the defense, which show a significant drop in executed revenue compared to 2021.

187. In view of the aforementioned criteria, the CNPD considers it necessary to apply, in this specific case, two reprimands and a fine to the defendant, considering that this is the effective proportionate and dissuasive measure that is imposed given the specific circumstances in which the infractions occurred .

188. The framework of the fine abstractly applicable to the defendant for the offense foreseen and punishable under the terms of the combined provisions of paragraph f) of paragraph 1 of article 5, in terms of the inability to guarantee the security of the treatments and the integrity and confidentiality of personal data processed, and paragraph a) of paragraph 5 of article 83 and has a maximum limit of € 20,000,000.00.

189. While the frame of the fine is abstractly applicable to the defendant for the offense envisaged and punishable under the terms of the combined provisions of paragraph 1 of article 37 (designation of the person in charge of data protection) and paragraph a) of paragraph 4 of article 83, all of the RGPD, has a maximum limit of € 10,000,000.00.

190. Assessing the facts found in the light of the criteria set out above, the CNPD, - pursuant to article 58, no. 2, par. b) of the RGPD, also considers that the application to the defendant of:

i. a fine, in the amount of €120,000 (one hundred and twenty thousand euros) for breach of paragraph f) of paragraph 1 of article 5, in terms of inability to guarantee the security of treatments and the integrity and confidentiality of personal data treaties, and Article 83(5)(a) of the GDPR;

ii. a reprimand for violation of Article 5(1)(e) in conjunction with Article 58(2)(b) of the GDPR;

iii. a reprimand for breach of Article 13(1) and (2) in conjunction with Article 58(2)(b) of the GDPR;

iv. a fine of €100,000 (one hundred thousand euros) for breach of Article 37(1) (designation of the data protection officer) in conjunction with Article 83(4)(a) .

191. Added to the partial fines, it results in a total of €220,000 (two hundred and twenty thousand euros).

192. After framing the partial fines, it is important to determine the single fine applicable to the specific case.

193. It appears that the RGPD establishes in paragraph 3 of article 83 that, "[if] the controller or processor violates, intentionally or through negligence, within the scope of the same processing operations or operations linked together, various provisions of this Regulation, the total amount of the fine may not exceed the amount specified for the most serious breach". As literally expressed, such regulation should only be invoked in cases where the infractions have been committed "in the scope of the same treatment operations", or of "interconnected operations", which does not occur in the concrete case, applying , then, the General Regime of Administrative Offenses (RGCO), ex vi Article 45 of Law No. 58/2019, of August 8.

194. Article 19 of the RGCO sets out the legal criteria for the legal accumulation of convictions in fines, which means that the single fine to be applied in the condemning decision must be set between a minimum limit constituted by the highest of the fines actually imposed on

each of the administrative offenses (n.º 3), in this case € 120,000 (one hundred and twenty thousand euros), and with a maximum limit constituted by the sum of the fines concretely applied to each of the administrative offenses (n.º 1), being that total of €220,000 (two hundred and twenty thousand euros).

195. Therefore, the abstract frame of the single fine to be applied is between a minimum of €100,000 (one hundred thousand euros) and a maximum of €220,000 (two hundred and twenty thousand euros).

saw. Grounds for applying the single fine

196. The essential prerequisite for the effectuation of the legal accumulation of partial fines is the commission of several infractions by the same Defendant before the final conviction for any of them becomes final.

197. In this sense, in order to carry out the legal combination, it is necessary to verify the following requirements, of a procedural and material nature, (i) that they are sanctions related to administrative offenses committed before the final and unappealable conviction for any of them,

(ii) that have been committed by the same defendant and that the partial sanctions are of the same nature.

198. What is seen cumulatively in the present case, thanks to the existence of effective or pure competition, either in terms of actual competition or in terms of ideal competition.

199. It was found that the defendant acted freely and consciously, albeit negligently, when

i. not guaranteeing that the data processed by you were "in a way that guarantees] their security, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, adopting the appropriate technical or organizational measures .

ii. not designate the data protection officer.

200. The concrete context in which the violations occurred is highlighted here, together with the fact that the Municipality acted in order to overcome constraints of a humanitarian and emerging nature. Constraints that assume a degree of originality that may explain some of the unpreparedness demonstrated.

201. In any case, the violation of the obligation to appoint the Data Protection Officer is not directly linked to this emergency, so

the same degree of devaluation of the action that is attributed to the other violation cannot be accepted.

202.Now, also taking into account the legal assets protected by the administrative offenses in question, which the defendant committed, it seems effective, proportional and dissuasive, the application to the defendant, in legal conjunction, under the terms of the combined provisions of article 83. , n.º 3 of the RGPD and 19.º, n.º 3 of the RGCO, a single fine of € 170,000.00 (one hundred and seventy thousand euros).

saw. Conclusion

203. In view of the above, the CNPD decides:

Apply to the defendant Municipality of Setúbal,

a) observing the provisions of article 19 of the RGCO, a single fine, in the amount of € € 170,000 (one hundred and seventy thousand euros) due to the violation of the principle of integrity and confidentiality of the violation of the obligation to designate the person in charge of protection of data;

b) observing the provisions of paragraph b) of paragraph 2 of article 58 of the RGPD, two reprimands,

I. One for violating the principle of conservation limitation;

II, One for breaching the duty to provide essential information when personal data are collected from the holder.

204. Pursuant to article 58, paragraphs 2 and 3 of the General Regime of Offenses, inform the defendant that:

a) The conviction becomes final and enforceable if it is not judicially contested, under the terms of article 59 of the same law;

b) In the event of judicial challenge, the Court may decide at a hearing or, if the defendant and the Public Prosecution Service do not object, by means of a simple order.

Av. D. Carlos 1,134, Io

1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt

205. The defendant must pay the fine within a maximum period of 10 days after its finality, sending the respective payment

slips to the CNPD. In case of impossibility of the respective timely payment, the defendant must communicate this fact, in writing, to the CNPD.

Approved at the meeting of November 2, 2022

Ana Paula Lourenço (rapporteur)

Luis Barroso

Maria Cândida Guedes de Oliveira (uA

Maria da Conceicao Diniz

Filipa Calvao (President)