

I. Order

1. The President of the Municipal Assembly of the Municipality of Mira asked the National Data Protection Commission (CNPd) to issue an opinion on the draft amendment to the Regulations of the Municipal Assembly of Mira, for the four-year period 2021/2025, which provides for the introduction of a chapter on the «Online Transmission of the Sessions of the Municipal Assembly».

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.

3. In accordance with the provisions of the Draft Amendment to the Rules of Procedure, the filming and audio and video transmission of the sessions of the Municipal Assembly are regulated, explaining, in another article, that by audio/video transmission is understood "the audiovisual technique which allows you to capture and reproduce images and sounds, live and online [...]"

4. The live and online audio and video transmission of the sessions of the Municipal Assembly 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. To that extent,

in addition to the right to image, the disclosure of the aforementioned information affects the right to protection of personal data and is susceptible, 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).

II. Analysis

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6. 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.

7. However, the present Draft amendment makes the processing of personal data dependent on the prior, informed, free, specific and explicit consent of all those involved in the session, whether they are performing their duties. «whether[...]J are exercising the right to participation, even if the latter only translates into the mere presence or attendance at the sessions of the Municipal Assembly», in accordance with the provisions of subparagraph a) of paragraph 1 of article 6, in Article 9(2)(a) and in Article 4(11) of the GDPR

8. In fact, there is currently no legal rule that provides for or regulates the processing of personal data resulting from the online and live transmission of interventions in meetings of municipal bodies, nor is it necessary for the realization of the principle of publicity of the meetings of the assemblies the online transmission of the referred meetings and the 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.

9. As there is no legal obligation to carry out such transmission, nor is such disclosure necessary for the pursuit of legally defined municipal attributions, the provision in the Project to change the prior consent obtained proves to be adequate to ensure the lawfulness of the treatment .

10. Furthermore, the article entitled "Rights of Interveners" defines a set of rules that ensure freedom of consent, as well as the suspension of transmission whenever a citizen who intends to actively intervene in the meeting has not consented to the processing of your data for that purpose.

11. It should be noted that this provision, in paragraph 5 of the aforementioned article, specifically designed for the active participation of citizens, must be extended to other stakeholders, in particular to elected members of the Municipal Assembly who have not consented to the transmission of their interventions - otherwise, the provision of prior consent as a condition for data processing would be nullified.

12. It is also noted that, in the same paragraph 5 of that article, the reference to "and you have previously expressed your non-consent" is not the most consistent with the rules of the GDPR, as it allows the interpretation of

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that it is necessary to "not consent" so that an actor does not see your image or your statements transmitted online. When, in fact, the processing of data resulting from this transmission can only be carried out with the unequivocal declaration (positive act) of consent, so if any citizen has not completed the declaration of consent, the Municipality is not entitled to capture and transmit online images or statements thereof. For this reason and for the clarity of the rule, the CNPD recommends changing the expression "and you have previously expressed your non-consent", suggesting its replacement by and you have not previously expressed your consent.

13. The proposed amendment also governs the provision of information, in accordance with the provisions of article

13 of the GDPR. In this regard, only the convenience of eliminating, in the heading of the article that regulates compliance with the right to information, the reference to "Consent [...]" is highlighted, since the declarative model of consent is autonomously provided for in article Following.

14. A final note to highlight that the Amendment Project is silent on the place on the Internet where the transmission of the sessions will take place, since this is an aspect of the treatment that is not irrelevant also in terms of impact on the rights of data subjects . It is true that the principles of proportionality and data minimization (cf. point c) of paragraph 1 of article 5 of the GDPR) require that the processing of personal data is carried out to the extent strictly necessary to achieve the intended purpose .

15. In fact, the online and live transmission of the sessions on the website of the Municipality of Mira may have different risks, which is, in legal terms, the proper context for publicizing the municipal activity, or, for example, on social networks .

16. The CNPD recalls that there are increased risks arising from the availability on social networks of images and statements captured during meetings, due to the fact that these platforms promote the reuse of personal data for other purposes, which may serve to create profiles about the people to be to whom the data relate, without the Municipality or the data subjects having control over this and all subsequent processing. It is noted, in this regard, that the suitability and necessity of the processing of personal data by public entities in social networks is being analyzed within the European Data Protection Committee.

17. For this reason, the CNPD recommends specifying the location on the internet where the sessions are transmitted, taking into account the specific risks of reusing personal data for different purposes that the possible transmission on social networks raises and the doubts regarding the suitability and necessity of this personal data processing operation for the pursuit of public attributions.

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18. The CNPD also alerts to the need for the processing of personal data resulting from the possible transmission of meetings on networks 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.

III. Conclusion

19. On the grounds set out above, the CNPD understands that the Project to amend the Regulations of the Municipality of Mira is, in essence, in accordance with the RGPD, recommending only:

The. the revision of paragraph 5 of the article entitled "Rights of Interveners", to extend its provision also to all intervening parties and, regarding the expression "and has previously expressed its non-consent", its amendment, suggesting its replacement by and you have not previously expressed your consent;

B. the elimination, in the heading of the article that regulates the fulfillment of the right to information, the reference to "Consent [...]"; and

ç. the normative forecast of the website where the online transmission will take place, recommending that the specific risks of re-use of personal data for different purposes that the eventual transmission on social networks raises and the doubts regarding the adequacy and necessity of this processing operation be taken into account of personal data for the pursuit of public attributions.

Approved at the meeting of July 19, 2022

Filipa Calvão (President)