
Portuguese Data Protection Authority sanctions Lisbon City Council with a fine of €1.25 million

CNPD considered that CML had transferred data to third parties without an adequate legal basis, had not provided the legally required information to the data subjects and had failed in its obligations to carry out a data protection impact assessment (DPIA).

Intellectual Property, Media and IT Legal Flash

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General notes

On January 14, 2022, the Portuguese Data Protection Authority (CNPD) sanctioned the Lisbon City Council (CML) with a fine of €1,250,000 for violations in the processing of protest organizers' personal data. This sanction corresponds to the total of 225 fines for the willful violation of the provisions of the General Data Protection Regulation (GDPR). At stake was the violation of the principles of loyalty, transparency, lawfulness, storage limitation, and data minimization, as well as the violation of the duty to provide information and the obligation to conduct a Data Protection Impact Assessment (DPIA). The CNPD also considered that the CML had processed personal data without a legal basis and had breached the rules on transfers of data to third countries.

The fine follows a complaint, received on March 19, 2021, regarding the communication to the Russian Embassy in Portugal and to the Russian Ministry of Foreign Affairs of the personal data of the organizers of a protest held near the Russian Embassy. The CML requested that the CNPD waive the fine, putting forward, as a justification, the financial difficulties caused by the pandemic. Although the CNPD decided not to waive the fine, it did consider the CML's justification when determining the partial amount of the applicable fine. However, it considered that, due to the "degree of reprehensibility of the conduct and the risks for the data subjects, a much higher sanction would have been justified."

The CNPD considered that the assessment of compliance with internal procedures and personal data processing activities was late and insufficient, which highlighted an "evident inefficiency of the services" and a "defect that the municipality itself assumed," after issuing the Lisbon City Council Order of April 13, 2013 (the "Order"), which aimed to attribute the management of the personal data in the protest's notices to the Mayor of Lisbon without regulating the protest organizers' right to the protection of their personal data. In addition to preventing or limiting the exercise of the constitutional right to protest by sending notices to the Ministry of Internal Administration (MAI) and to COMETLIS/PSP, the CNPD considered that although the Order allowed the CML to legitimately collect, register and store the protest organizers' personal data, it did not allow it to abusively and excessively communicate that data to third parties, internal services of the municipality, or ministerial offices.

The CNPD pointed out that the nature of the personal data subject to processing, which relates to organizers of meetings, rallies or protests, goes beyond the mere identification or contact data of their holders, and instead concerns special category data. Therefore, by communicating this special category data to a large number of third parties, the CML fostered the processing of data relating to political, philosophical or religious beliefs, which are beyond municipal control, through aggregating the identification of the organizers' personal data. The CNPD went further and considered that the communication to third parties, in addition to violating the fundamental right to the protection of personal data,



creates additional risks to the protest organizers' rights, freedoms and constitutional guarantees.

The CNPD also considered that there is no legal basis for legitimizing the communication of the protest organizers' personal data to the MAI or COMETLIS/PSP because, due to the political nature that characterizes most situations involving the exercise of the right to hold protests and rallies, the communication of data to those entities and to other third parties (such as embassies or consulates of third countries) is contrary to (i) the obligation to limit the number of people with access to the organizers' personal data (the need-to-know principle of data minimization); and (ii) the legal requirements for the transfer of data to third countries, as set out in the GDPR.

Also, the information that the CML processed and collected revealed particularly sensitive aspects of the lives of its holders. Therefore, the CNPD argued that the absence of a policy defining an adequate period for storing the organizers' personal data resulted in the indefinite storage of that data, which, by focusing on special categories of data, breaches the GDPR.

The CNPD reiterated that the GDPR contains a reinforced protection regime for the processing of special categories of data, which data controllers should bear in mind. The CNPD also considered that a DPIA had to be carried out, which the CML had failed to do.

The CNPD also reiterated the position it had expressed previously in Decision 2019/494, under which certain rules of Law 58/2019 of August 8 ("Law 58/2019") must be disapplied if they violate European Union law, which has primacy. This includes (i) the additional criteria for determining the amount of the fine under article 39, paragraph 1 of Law 58/2019, and as stated in articles 37 and 38; and (ii) the rule established in article 39, paragraph 3 of Law 58/2019 under which the fine may or may not be imposed depending on whether a prior warning is given (except in cases of willful violation).

You can find the full text of the CNPD's decision [here](#) (only available in Portuguese).

Final Provisions

Given the importance of the above matters, we draw attention to the need to:

- a) create internal rules to ensure that DPIAs are prepared that comply with what is established in the GDPR, particularly when special categories of data are processed;
- b) reassess the procedures implemented to provide information to data subjects and ensure that they comply with the law;



- c) map the data processing carried out in organizations, ensuring that it is necessary to achieve certain purposes, and that there is an adequate basis for the lawful processing of data, and data transfers to third countries are regulated; and
- d) assess whether the procedures, rules and documents implemented to comply with other legislation (particularly obligations arising from sectoral legislation) are also designed to comply with the GDPR.

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