

Portuguese Implementation of the GDPR

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Practice notes | [Law stated as of 24-Aug-2020](#) | Portugal

A Practice Note discussing the requirements of Portuguese [Law No. 58/2019](#) (in Portuguese), which implements the EU General Data Protection Regulation (GDPR). This Note discusses the applicability of Portuguese and key provisions, such as rules for processing special categories of personal data, limitations on the scope of data subjects' rights, and personal data processing in the employment context.

Applicability of the GDPR and Portuguese Law

- Territorial Scope

- Material Scope

Data Protection Officers

Processing Special Categories of Personal Data

- GDPR Exceptions Permitting Processing

- Portuguese Law Exceptions That Permit Processing Special Categories of Personal Data

- Genetic, Biometric, and Health Data

Processing Criminal Conviction and Offense Data

Processing for Secondary Purposes

Child Consent

Data Subjects' Rights

- GDPR Article 23 Objectives That Permit Restrictions to Data Subject Rights

- Portuguese Law Exceptions to Data Subject Rights

Derogations for Specific Processing Situations

- Processing for Journalistic Purposes or Academic, Artistic, or Literary Expression

- Disclosures of Personal Data in Official Documents

- Processing for Archiving in the Public Interest, Scientific or Historical Research, or Statistical Purposes

Processing in the Employment Context

- Employee Consent

- Workplace Surveillance

Other GDPR Derogations

- Supervisory Authority

- Administrative Fines and Criminal Penalties

- Video Surveillance

Portuguese Law and GDPR Statutory References

The EU General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR) took effect on May 25, 2018, replacing the [EU Data Protection Directive](#) (Directive 95/46/EC). The GDPR introduced a single legal framework across the EU. However, the GDPR includes several provisions allowing EU member states to enact national legislation specifying, restricting, or expanding some requirements.

Portugal enacted [Law No. 58/2019](#) (in Portuguese) (Portuguese Law), which aligns the Portuguese data protection framework with the GDPR and revokes the prior Law No. 67/1998. The Portuguese Law also changes some of the GDPR's requirements.

After the Portuguese Law's enactment, the National Commission for the Protection of Data (CNPD) approved [Resolution No. 2019/494](#) (in Portuguese) (CNPD Resolution), which suspended application of several provisions of the Portuguese Law to ensure the principle of primacy of EU law and the consistent application of the GDPR by the supervisory authorities of all EU member states. Where the CNPD determined that the Portuguese Law restricts, contravenes, or compromises the GDPR, the relevant provisions of the GDPR control.

This Note discusses the applicability of Portuguese data protection law and key provisions of the Portuguese Law, including requirements on:

- Appointing a data protection officer.
- [Processing special categories of personal data](#), including [genetic](#), [biometric](#), and [health data](#).
- The age of child consent.
- Limiting the scope of [data subject rights](#) and [controllers'](#) related obligations.
- Processing [personal data](#) for journalistic purposes or academic, artistic, or literary expression.
- Processing for archiving purposes in the public interest, scientific or historical research, or statistical purposes.
- Public access to official documents.
- Processing in the employment context.
- Administrative fines and other sanctions.
- CCTV and video surveillance use.

For GDPR guidance from the CNPD, see [GDPR Data Protection Authority Guidance Tracker by Country \(EEA\): Portugal](#).

Applicability of the GDPR and Portuguese Law

Territorial Scope

The GDPR applies to:

- Controllers and **processors** that process personal data in the context of the activities of an EU establishment, regardless of whether the data processing takes place in the EU (Article 3(1), GDPR).
- Controllers and processors not established in the EU that process personal data about EU **data subjects** when the processing activities relate to:
 - offering goods or services to EU data subjects, regardless of whether they require payment; or
 - monitoring their behavior that takes place in the EU.

(Article 3(2), GDPR.)

- Controllers not established in the EU but located in a place where EU law applies according to public international law (Article 3(3), GDPR).

Some EU member states have passed national laws that include a territorial scope provision that mirrors GDPR Article 3, while other member states' laws have slightly modified the applicability language in this Article. The Portuguese Law mirrors GDPR Article 3 with some important differences. The Portuguese Law applies to personal data processing carried out:

- In Portugal, regardless of whether the controller or processor is a private or public entity, and even if the processing is necessary to comply with a legal obligation or to perform a task carried out in the public interest (Article 2(1), Portuguese Law).
- Outside Portugal when the processing:
 - occurs within the scope of the activities of a Portuguese establishment;
 - affects data subjects located in Portugal and falls under GDPR Article 3(2); or
 - affects data registered in consular offices for Portuguese data subjects who reside abroad.

(Article 2(2), Portuguese Law.)

However, under the CNPD Resolution, the CNPD will not apply the territorial scope provisions in:

- Articles 2(1) and 2(2)(b) of the Portuguese Law, which contravene the GDPR Article 56 one-stop shop principle for cross-border processing (as defined by GDPR Article 4(23)).
- Article 2(2)(c) of the Portuguese Law, which restricts the scope of GDPR Article 3(3) by only referencing consular posts.

Material Scope

The GDPR does not apply to personal data about deceased persons. However, GDPR Recital 28 permits EU member states to provide rules for processing this data. The Portuguese Law applies to personal data processing of deceased individuals' personal data relating to:

- Special categories of personal data under GDPR Article 9 (see [Processing Special Categories of Personal Data](#)).
- Intimacy of private life.
- The deceased's image.
- Communications data.

(Article 17(1), Portuguese Law.)

A person designated by the deceased individual, or without a designation, the individual's heirs, may exercise rights of access, rectification, and erasure on the deceased's behalf (Article 17(2), Portuguese Law). The deceased individual may also prohibit the exercise these rights after their death (Article 17(3), Portuguese Law).

For more on the GDPR's applicability and scope, see [Practice Note, Determining the Applicability of the GDPR](#).

Data Protection Officers

The GDPR requires controllers and processors to appoint a [data protection officer](#) (DPO) under certain circumstances (Article 37(1), GDPR; see [Practice Note, Data protection officers under the GDPR and DPA 2018](#)). The GDPR allows EU member states to require DPO appointments in additional situations (Article 37(4), GDPR). The Portuguese Law does not require appointing a DPO under additional circumstances, but makes explicit some of the situations that require a DPO appointment by public authorities or bodies, including:

- The State.
- Autonomous regions.
- Local authorities and legally established supranational entities.
- Independent administrative authorities and the Bank of Portugal.
- Higher education institutions.
- State-owned, regional, and local company sectors' enterprises.
- Public associations.

(Article 12(2), Portuguese Law.)

The Portuguese Law also requires at last one DPO in:

- Each Ministry, Regional Department, and municipality.
- Certain parishes, in particular those with more than 750 inhabitants.
- The remaining public authorities and bodies.

(Article 12(3), Portuguese Law.)

The Portuguese Law requires private entities to appoint a DPO under the circumstances specified in GDPR Article 37(1)(b) and (c) (Article 13, Portuguese Law; see [Practice Note, Data protection officers under the GDPR and DPA 2018](#)).

The Portuguese Law binds the DPO to an obligation of secrecy and confidentiality concerning the performance of their tasks, including after they cease performing the tasks of the DPO (Article 10, Portuguese Law). The Portuguese Law extends the DPO's tasks to include:

- Ensuring periodic and unscheduled audits.
- Making users aware of the importance of timely detection of security incidents and the need to immediately report incidents to the information security officer.
- Ensuring the relationship with data subjects in matters covered by the GDPR and Portuguese Law.

(Article 11, Portuguese Law.)

Processing Special Categories of Personal Data

The GDPR prohibits processing special categories of personal data unless an exception applies (Article 9(1), GDPR). Special categories of personal data include:

- Racial or ethnic origin.
- Political opinions.
- Religious or philosophical beliefs.
- Trade union membership.
- Genetic data.
- Biometric data.
- Data concerning health or sex life.
- Sexual orientation.

(Article 9(1), GDPR.)

GDPR Exceptions Permitting Processing

GDPR Article 9(2) includes several exceptions to the prohibition on processing special categories of personal data. Some of these exceptions require data controllers to consult EU or member state law to determine a lawful basis for processing.

The exceptions requiring a basis in EU or member state law include when the processing is necessary for:

- Carrying out the controller's obligations and exercising the controller's or data subjects' rights in the fields of employment law, social security, and social protection (Article 9(2)(b), GDPR).

- Reasons of substantial public interest (Article 9(2)(g), GDPR).
- Purposes of preventive or occupational medicine to assess a data subject's working capacity, for medical diagnosis, for the provision of health or social care or treatment, for the management of health or social care systems and services, or under a contract with a health care professional, subject to certain conditions and safeguards (Article 9(2)(h), GDPR).
- Reasons of public interest in the area of public health (Article 9(2)(i), GDPR).
- Archiving in the public interest, scientific or historical research purposes, or statistical purposes (Article 9(2)(j), GDPR).

Other GDPR Article 9 exceptions provide a sufficient legal basis for processing special categories of personal data without the need for a further basis in EU or member state law, including when the data subject consents to processing (Article 9(2)(a) to (f), GDPR).

EU or member state law may prohibit the use of data subject consent as a legal basis for processing special categories of personal data (Article 9(2)(a), GDPR). However, the Portuguese Law does not prohibit this.

For more on processing special categories of personal data under the GDPR, see [Practice Note, Overview of EU General Data Protection Regulation: Special categories of personal data](#).

Portuguese Law Exceptions That Permit Processing Special Categories of Personal Data

The Portuguese Law only includes provisions on processing genetic, biometric, and health data (see [Genetic, Biometric, and Health Data](#)). All other processing relating to special categories of personal data must comply with GDPR Article 9 (see [GDPR Exceptions Permitting Processing](#)).

Genetic, Biometric, and Health Data

The GDPR permits EU member states to introduce further conditions and limitations on processing genetic, biometric, and health data (Article 9(4), GDPR). The Portuguese Law permits access to these data categories only on a need to know basis (Article 29(1), Portuguese Law).

The Portuguese Law specifies that only a professional bound by secrecy or another person bound by a duty of secrecy or confidentiality may process personal data based on GDPR Articles 9(2)(h) and (i) (see [GDPR Exceptions Permitting Processing](#)). The person carrying out the processing must guarantee appropriate information security measures. (Article 29(2), Portuguese Law.)

The Portuguese Law also binds several individuals who access health-related data, including for healthcare monitoring or funding activities, to a duty of confidentiality and secrecy, including:

- The controller's board members.
- Workers and service providers.
- The DPO.
- Health and genetics students and researchers.

- Health professionals.

(Article 29(4), (5), Portuguese Law.)

The Portuguese government must approve by ordinance appropriate information security measures and minimum technical security requirements for processing health and genetic data, which may include:

- Access permissions based on a need-to-know and segregation of functions.
- Prior authentication requirements for access.
- An electronic log of each access and the accessed data.

(Article 29(7), Portuguese Law.)

The Portuguese Law also limits employers' processing of biometric data. Employers may only process this data for either:

- Attendance control.
- Access control to the employer's premises.

(Article 28(6), Portuguese Law.)

Processing Criminal Conviction and Offense Data

The GDPR only permits processing personal data relating to criminal convictions or offenses when either:

- Carried out under the control of official authority, for example, the police.
- Authorized by EU or member state law providing for appropriate safeguards for data subjects.

(Article 10, GDPR.)

The Portuguese Law does not authorize processing this data under additional circumstances. All processing relating to criminal conviction and offense data must comply with GDPR Article 10.

Processing for Secondary Purposes

The GDPR generally restricts data processing to the original collection purpose unless an exception applies, for example:

- The data subject consents to processing for a secondary purpose.
- An EU or member state law, which is a necessary and proportionate measure to safeguard certain important objectives, permits the processing for a secondary purpose (see [GDPR Article 23 Objectives that Permit Restrictions to Data Subject Rights](#)).

(Article 6(4), GDPR.)

Without data subject consent, any secondary processing purpose must both:

- Be compatible with the original processing purpose.
- Satisfy the conditions in GDPR Article 6(4).

(Article 6(4), GDPR.)

To determine the secondary processing purpose's compatibility, the controller should consider the criteria specified in GDPR Article 6(4) (see [Practice Note, Overview of EU General Data Protection Regulation: Further compatible processing](#)).

The Portuguese Law permits public entities to process or transfer personal data for different purposes than the original collection purpose, provided the secondary purpose is exceptional and the public interest is at stake (Article 23, Portuguese Law). However, under the CNPD Resolution, the CNPD will not apply Article 23 of the Portuguese Law, stating that the provision contravenes the purpose limitation in GDPR Article 5(1)(b) because it does not specify which public interests are at stake. As a result, the CNPD deemed Article 23 of the Portuguese Law not compliant with GDPR Article 6(4).

Child Consent

For online service providers offering services directly to children (called information society services in the GDPR), the GDPR permits EU member states to lower the age of child consent below 16 years old, if the age is not lower than 13 (Article 8(1), GDPR). The Portuguese Law reduces the age of child consent to 13 (Article 16(1), Portuguese Law). For children younger than 13, a legal representative must provide consent, preferably using secure authentication (Article 16(2), Portuguese Law).

The Portuguese Law does not otherwise change the requirements for obtaining valid consent from children or impose any additional requirements or restrictions on processing personal data about children.

Data Subjects' Rights

The GDPR grants data subjects several rights and imposes several obligations on controllers relating to those rights in Articles 12 to 22, 34, and 5 (as it relates to the rights and obligations in Articles 12 to 22) (see [Practice Note, Data Subject Rights Under the GDPR](#)). The GDPR permits EU member states to restrict the scope of these data subject rights and controller obligations when the restriction is a necessary and proportionate measure in a democratic society to safeguard certain objectives or in other specific processing situations (Articles 23 and 85 to 91, GDPR; see [GDPR Article 23 Objectives that Permit Restrictions to Data Subject Rights](#) and [Derogations for Specific Processing Situations](#)).

GDPR Article 23 Objectives That Permit Restrictions to Data Subject Rights

EU member states may restrict the scope of data subjects' rights and controllers' related obligations in GDPR Articles 12 to 22, 34, and 5 (as it relates to the rights and obligations in Articles 12 to 22) when the restriction is a necessary and proportionate measure to safeguard:

- National security.
- Defense.
- Public security.
- The prevention, investigation, detection, or prosecution of criminal offenses or the execution of criminal penalties.
- Other important economic or financial public interests of the EU or member state, including:
 - monetary, budgetary, and taxation matters;
 - public health; and
 - social security.
- Judicial independence and proceedings.
- The prevention, investigation, detection, and prosecution of ethics breaches for regulated professions.
- Monitoring, inspection, or regulatory functions connected to the exercise of official authority regarding:
 - national or public security;
 - defense;
 - other important public interests;
 - crime prevention; or
 - breaches of ethics for regulated professions.
- Protection of the individual or the rights and freedoms of others.
- Enforcing civil law matters.

(Article 23(1), GDPR.)

EU or member state laws restricting data subjects' rights to ensure GDPR Article 23 objectives should, when relevant, include provisions on:

- The purposes of the processing or categories of processing.
- The categories of personal data.
- The scope of the restrictions.
- The safeguards to prevent abuse or unlawful access or transfer.
- The specification of the controller or categories of controllers.
- Data retention periods and applicable safeguards, considering the nature, scope, and purposes of processing or categories of processing.

- The risks to data subjects' rights and freedoms.
- Data subjects' rights to be informed about the restriction unless doing so is prejudicial to the restriction's purpose.

(Article 23(2), GDPR.)

Portuguese Law Exceptions to Data Subject Rights

The Portuguese Law includes provisions limiting or changing the scope of the following data subject rights:

- Information (see [Information Rights](#)).
- Access (see [Access Rights](#)).
- Data portability (see [Data Portability Rights](#)).
- Erasure (see [Erasure Rights](#)).

The Portuguese Law also restricts certain data subjects' rights when processing personal data for archiving in the public interest, scientific or historical research, or statistical purposes (see [Processing for Archiving in the Public Interest, Scientific or Historical Research, or Statistical Purposes](#)).

Information Rights

GDPR Article 23 permits derogations to data subjects' information rights when necessary to safeguard certain important objectives (see [GDPR Article 23 Objectives That Permit Restrictions to Data Subject Rights](#)). The Portuguese Law includes a provision restricting data subjects' information rights under GDPR Article 13 where the controller or processor has a secrecy obligation enforceable against the data subject (Article 20(1), Portuguese Law). However, under the CNPD Resolution, the CNPD will not apply Article 20(1) of the Portuguese Law because the provision does not specify the purpose of the limitation, which, in the CNPD's view, contravenes GDPR Article 23(2).

Access Rights

GDPR Article 23 permits derogations to data subjects' access rights when necessary to safeguard certain important objectives (see [GDPR Article 23 Objectives That Permit Restrictions to Data Subject Rights](#)). The Portuguese Law includes a provision restricting data subjects' access rights under GDPR Articles 15 where the controller or processor has a secrecy obligation enforceable against the data subject (Article 20(1), Portuguese Law). However, under the CNPD Resolution, the CNPD will not apply Article 20(1) of the Portuguese Law because the provision does not specify the purpose of the limitation, which, in the CNPD's view, contravenes GDPR Article 23(2).

The Portuguese Law also restricts data subjects' access rights when processing personal data for archiving in the public interest, scientific or historical research, or statistical purposes (see [Processing for Archiving in the Public Interest, Scientific or Historical Research, or Statistical Purposes](#)).

Data Portability Rights

The Portuguese Law limits data subjects' data portability rights to personal data provided by the data subject, and also provides that data portability should, whenever possible, take place in an open format (Articles 18(1), (2), Portuguese Law).

Erasure Rights

The Portuguese Law establishes that data retention periods are determined by:

- Applicable law or regulation.
- Necessity for the processing purpose.

(Article 21(1), Portuguese Law.)

Under the Portuguese Law, data subjects may only exercise their GDPR Article 17 erasure rights after the relevant retention period expires (Article 21(5), Portuguese Law).

Derogations for Specific Processing Situations

The GDPR provides additional rules that apply to seven specific processing situations (Articles 85 to 91). These Articles permit EU member states to enact further rules that apply to the specified processing types. The Portuguese Law introduces further rules that apply to:

- Processing for journalistic purposes or academic, artistic, or literary expression (see [Processing for Journalistic Purposes or Academic, Artistic, or Literary Expression](#)).
- Disclosures of personal data in official documents (see [Disclosures of Personal Data in Official Documents](#)).
- Processing for archiving purposes in the public interest, scientific or historical research, or statistical purposes (see [Processing for Archiving in the Public Interest, Scientific or Historical Research, or Statistical Purposes](#)).
- Processing in the employment context (see [Processing in the Employment Context](#)).

Processing for Journalistic Purposes or Academic, Artistic, or Literary Expression

The GDPR permits EU member states to establish derogations from the GDPR when necessary to reconcile the right to personal data protection with the right to freedom of expression and information (Article 85, GDPR).

Controllers must balance personal data protection under the GDPR and the Portuguese Law and the exercise of the right of freedom of expression, information, and the press when processing relates to journalistic purposes and academic, artistic, or literary expression (Article 24(1), Portuguese Law). The exercise of the right of information is limited at all times by the principle of human dignity and the personality rights specified in the Portuguese Constitution, in particular when related to special categories of personal data or personal data of deceased individuals (Article 24(2), Portuguese Law).

Processing for journalistic purposes must comply with [Law No. 1/99](#) (in Portuguese) (Article 24(3), Portuguese Law). The right to freedom of expression does not legitimize disclosure of personal data such as address or personal contacts unless the information is public knowledge (Article 24(4), Portuguese Law).

Disclosures of Personal Data in Official Documents

The GDPR permits EU member states to establish rules on the disclosure of personal data in official documents that public authorities and bodies hold (Article 86, GDPR).

Under the Portuguese Law, any publication of personal data in an official journal must:

- Comply with the GDPR Article 5 principles of purpose limitation and data minimization.
- Not disclose any other personal data type when the data subject's name would be enough to identify them.
- Not modify, erase, or hide the personal data.

(Article 25, Portuguese Law.)

The right to erase personal data published in an official journal applies only under exceptional circumstances and can only be achieved under the conditions in GDPR Article 17, and only where this is the only way to safeguard the right to be forgotten (Article 25(4), Portuguese Law). Controllers should execute data subjects' erasure rights through deindexation of the data in search engines, without deletion of the underlying official publication (Article 25(5), Portuguese Law).

Access to administrative documents that contain personal data must comply with [Law No. 26/2016](#) (in Portuguese) (Article 26, Portuguese Law).

Processing for Archiving in the Public Interest, Scientific or Historical Research, or Statistical Purposes

The GDPR permits EU member states to establish rules when processing personal data for archiving purposes in the public interest, scientific or historical research, or statistical purposes (Article 89, GDPR).

The Portuguese Law permits controllers to limit certain data subject rights when processing personal data for these purposes, including:

- Access (Article 15, GDPR).
- [Rectification](#) (Article 16, GDPR).
- [Processing restriction](#) (Article 18, GDPR).
- [Objection](#) (Article 21, GDPR).

(Article 31(2), Portuguese Law.)

Controllers may restrict these rights when honoring them makes it impossible to achieve, or seriously impairs achieving, the processing purposes (Article 31(2), Portuguese Law).

Any processing for these purposes must respect the principle of data minimization and the controller should anonymize or pseudonymize the data whenever possible (Articles 31(1), (5), Portuguese Law).

Processing in the Employment Context

The GDPR permits EU member states, by law or collective agreements, to provide more specific rules on processing personal data in the employment context (Article 88, GDPR).

Under the Portuguese Law, personal data processing by an employer about employees, or by a processor or certified accountant acting on the employer's behalf, is governed by [Law No. 7/2009](#) (in Portuguese) (Labour Code) and other sectoral legislation (Articles 28(1), (2), Portuguese Law). The details of these laws are outside the scope of this Note.

The Portuguese Law also limits employers' processing of biometric data. Employers may only process this data for either:

- Attendance control.
- Access control to the employer's premises.

(Article 28(6), Portuguese Law.)

Employee Consent

Employers should use caution when relying on consent in the employment context. EU supervisory authorities do not generally consider consent given in the employment context as freely given and often consider it invalid. Consent must comply with GDPR Articles 7 (Conditions for consent) and 6(1)(a), which require data subjects to give consent for specified purposes.

Under the Portuguese Law, employee consent is not a lawful basis for personal data processing if the processing either:

- Results in a legal or economic advantage for the employee (Article 28(3)(a), Portuguese Law).
- Is necessary for the performance of the employment contract (Article 28(3)(b), Portuguese Law).

However, under the CNPD Resolution, the CNPD will not apply Article 28(3)(a) of the Portuguese Law because it:

- Excessively restricts:
 - an employee's right to informational self-determination; and
 - the relevance of an employee's consent, even when there are conditions for providing it.
- Contravenes GDPR Articles 6(1)(a) and 9(2)(a).

Therefore, according to the CNPD, controllers should not rely on employee consent where the processing results in a legal or economic advantage for the employee.

For more on relying on employee consent under the GDPR, see [Practice Note, Employee Consent Under the GDPR](#).

Workplace Surveillance

Under the Portuguese Law, controllers may only use recorded images and other personal data about workers recorded through video surveillance systems or other technological means of remote surveillance in the context of criminal proceedings under Article 20 of the Labour Code or to establish disciplinary liability (Articles 28(4), (5), Labour Code).

Other GDPR Derogations

Supervisory Authority

GDPR Article 54 requires each EU member state to establish a supervisory authority. Articles 3 to 8 of the Portuguese Law establish the structure and organization of the National Commission for the Protection of Data (CNPD). [Law No. 43/2001](#) (in Portuguese), which the Portuguese Law amended and republished, establishes the CNPD's legal framework in greater detail.

In addition to the duties under GDPR Articles 57 and 58, the CNPD has the following additional tasks:

- Issue non-binding opinions on legislative and regulatory measures relating to data protection.
- Monitor compliance with the GDPR and other legal and regulatory provisions on data protection, and correct and sanction non-compliance.
- Make available a list of processing operations requiring a data protection impact assessment in accordance with GDPR Article 35(4) and specify criteria for classifying processing as high risk.
- Prepare and submit to the European Data Protection Board draft criteria for the accreditation of codes of conduct, monitoring bodies, and certification bodies and ensure the subsequent publication of any approved criteria.
- Cooperate with the Portuguese Institute of Accreditation in applying the rules on accreditation and certification and defining additional accreditation requirements.

(Article 6(1), Portuguese Law.)

The CNPD also has the power to intervene in legal proceedings related to violations of the GDPR and report criminal offenses (Article 36, Portuguese Law).

Administrative Fines and Criminal Penalties

The Portuguese Law permits the CNPD to impose administrative fines for violations of certain GDPR provisions, similarly to GDPR Articles 83(4) and (5), and distinguishes between serious and very serious administrative offenses. The Portuguese Law also provides that fines are graduated in three levels, depending on whether the company is a large enterprise, a small- or medium-sized enterprise, or a natural person, within the limits set by the GDPR. (Articles 37 and 38, Portuguese Law.)

When determining the amount of the fine, the CNPD will consider the following in addition to the criteria specified in GDPR Article 83(2):

- The economic situation of the natural person or the turnover and annual balance sheet in the case of a corporate person.
- The continued nature of the infringement.
- The size of the entity, including the number of employees and the nature of services provided.

(Article 39(1), Portuguese Law.)

The GDPR permits EU member states to specify penalties for GDPR violations that are not subject to administrative fines under GDPR Article 83 (Article 84, GDPR). The Portuguese Law permits the CNPD to impose administrative fines for violations of GDPR Article 10 and Section VI of the Portuguese Law on specific processing situations (Articles 24 to 31) (Article 37(1)(e) and (l), Portuguese Law; see [Processing Criminal Conviction and Offense Data](#) and [Derogations for Specific Processing Situations](#)).

However, under the CNPD Resolution, the CNPD will not apply certain provisions of the Portuguese Law relating to fines because, in the CNPD's view, they contravene GDPR Articles 83(2), (4), and (5). The CNPD Resolution still applies certain Articles of the Portuguese Law relating to administrative offenses under GDPR Article 84.

The Portuguese Law also criminalizes several violations, with the possibility of imprisonment and fines, including:

- Using personal data in a manner incompatible with the collection purpose.
- Unauthorized access.
- Copying, subtracting, assigning, or transferring personal data without consent or legal justification.
- Destroying, erasing, damaging, hiding, suppressing, or modifying personal data without justification or authorization.
- Inserting false data.
- Breaching secrecy obligations.
- Non-compliance with the GDPR or the Portuguese Law after the CNPD orders compliance and the compliance period passes.

(Articles 46 to 52, Portuguese Law.)

The Portuguese Law also punishes attempted crimes (Article 53, Portuguese Law).

Administrative Fines for Public Authorities and Bodies

The GDPR permits EU member states to specify whether and to what extent supervisory authorities may impose administrative fines on public authorities and bodies (Article 83(7), GDPR). The Portuguese Law permits imposing administrative fines on public authorities and bodies to the same extent as private entities (Article 44(1), Portuguese Law). However, public authorities and bodies may request that the CNPD not impose administrative fines for three years after a national law enters into force (Article 44(2), Portuguese Law).

Video Surveillance

GDPR Article 6(2) permits EU member states to enact more specific provisions on processing necessary to perform a task carried out in the public interest under GDPR Article 6(1)(e). This includes the power to implement provisions regulating CCTV and video surveillance use necessary for public interest purposes.

The Portuguese Law includes provisions on CCTV and video surveillance in Article 19. All use of video surveillance must comply with the GDPR's principles (Article 5) and the requirements for lawful processing (Articles 6 and 9). For more on the requirements for video surveillance, see Portuguese Law Article 19.

EU member states may also implement provisions on CCTV use in the employment context (see [Workplace Surveillance](#)).

Portuguese Law and GDPR Statutory References

Subject Matter	Portuguese Law	GDPR Articles Permitting Member State Derogation
Applicability of the Portuguese Law (see Applicability of the GDPR and Portuguese Law)	2(1), (2)	
Appointing a data protection officer (see Data Protection Officers)	10 to 13	37(4), 38(5)
Processing special categories of personal data (see Portuguese Law Exceptions That Permit Processing Special Categories of Personal Data)	28, 29	9(2)
Processing genetic, biometric, and health data (see Genetic, Biometric, and Health Data)	28, 29	9(4)
Processing criminal conviction and offense data (see Processing Criminal Conviction and Offense Data)		10
Processing for secondary purposes (see Processing for Secondary Purposes)	23	6(4)
Age of child consent (see Child Consent)	16	8(1)
Limitations on data subject rights (see Data Subjects' Rights and Portuguese Law Exceptions to Data Subject Rights)	18 to 21	23
Processing for journalistic purposes or academic, artistic, or literary expression (see Processing for Journalistic Purposes or Academic, Artistic, or Literary Expression)	24	85
Disclosures of personal data in official documents (see Disclosures of Personal Data in Official Documents)	25, 26	86

Processing for archiving in the public interest, scientific or historical research purposes, or statistical purposes (see Processing for Archiving in the Public Interest, Scientific or Historical Research, or Statistical Purposes)	31	89(2), (3)
Processing employee personal data (see Processing in the Employment Context)	28	9(4), 88
Workplace surveillance (see Workplace Surveillance)	28(4), (5), Labour Code	88
Supervisory authority (see Supervisory Authority)	3 to 8, 36	54
Administrative fines and criminal penalties (see Administrative Fines and Criminal Penalties)	37 to 39, 46 to 53	83, 84
Video surveillance (see Video Surveillance)	19	6(2)

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