

I. Order

1. 0 Instituto dos Registos e do Notariado, I.P. (IRN) has submitted to the National Data Protection Commission (CNPd) a draft protocol that aims to regulate the access of the Ponta Delgada Municipal Police to car registration, for the purpose of monitoring compliance with the Highway Code and complementary legislation on public roads. under the jurisdiction of the respective municipality.

2. The CNPD issues an opinion within the scope of its powers and competences as an independent administrative authority with powers of authority to control the processing of personal data, conferred by Article 57(1)(c) of Regulation (EU) 2016/679, of 27 April 2016 - General Data Protection Regulation (RGPD), in conjunction with the provisions of article 36(4) of the RGPD and in articles

3 and 4, no. 2, of Law No. 58/2019, of August 8.

3. The IRN, the Institute for Financial Management and Justice Equipment, I.P. are parties to the protocol. (IGFEJ) and the Municipal Chamber of Ponta Delgada.

4. Under the terms of subparagraph d) of paragraph 1 of article 5 and subparagraph b) of paragraph 3 of Decree-Law n.º 44/2005, of 23 February, the Municipal Police of Ponta Delgada is the entity responsible for supervising compliance with vehicle parking and road traffic rules, including the reporting of traffic accidents, in the territorial area of the Municipality of Ponta Delgada.

5. Pursuant to Clause 1a of the protocol, the Ponta Delgada Municipal Police «is authorized to access vehicle registration information, by consulting the respective database online», located in the IGFEJ, for the «exclusive purpose of pursuing of the competence that is legally entrusted to it, in the scope of the inspection of the rules of parking of vehicles and of road traffic, including the participation of traffic accidents, in the territorial area of the Municipality of Ponta Delgada».

6. The following data are accessed: «name, habitual residence, identification document number and date and tax identification number, when technically available, or company name, registered office and number of legal person, owner or lessee or usufructuary, and also the burdens and charges by date of occurrence of the fact and when technically available». (No. 1 of Clause 1a).

7. Access to the database is made through a search by vehicle registration and is conditioned to the mandatory identification of the case number or of the news report to which they refer (cf. no. 1 of Clause 2.a).

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PAR/2022/68

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8. For auditing purposes, accesses are recorded (logs) for a period of two years, in accordance with the provisions of paragraph 2 of Clause 2a of the protocol.

9. Pursuant to Clause 3.a of the protocol, the Ponta Delgada Municipal Police must comply with the legal provisions contained in the RGPD and Law No. consultation is authorized, which must be limited to what is strictly necessary, not using the information for other purposes; not to transmit the information to third parties; to take the necessary security measures to guarantee the integrity and proper functioning of the database. Any form of interconnection of personal data is also prohibited.

10. It is also foreseen that, if the Ponta Delgada Municipal Police uses the subcontractor to implement the protocol, it is bound, namely, to guarantee the security of the treatment, to ensure that the people involved assume a commitment to confidentiality and to inform to the IRN of all information necessary to demonstrate compliance with the obligations under the GDPR, including facilitating and contributing to audits or inspections conducted by the IRN or by another auditor mandated by it.

11. Access to the car registration database between the two bodies can be done through one of the methods provided for in the protocol, and the implementation of IPSEC tunnels is also mandatory (cf. Clause 4,a).

12. Also according to Clause 5.a of the protocol, the Ponta Delgada Municipal Police undertakes to previously communicate to the IRN the identification of the users of access to the database, indicating name and category/function, with a view to attributing the respective system access credentials. Access will be individualized, and each user will receive a personal password, which will make him responsible for the use he makes of the service. Requests for creating and changing users are forwarded by the IRN to the IGFEJ, IP, which keeps the list of users up to date, and must make it available to the IRN, IP.

13. The protocol is concluded for a period of one (1) year, tacitly extendable for equal periods. The resolution of the protocol implies the immediate cessation of authorization to access the vehicle registration database by the Ponta Delgada Municipal Police (cf. Clauses 10.a and 11.a).

II. Analysis

14. As for the articles, the possibility for municipalities to access the car registration derives from the combined provisions of subparagraph d) of paragraph 1 and subparagraph b) of paragraph 3 of article 5 of Decree-Law no. 44/2005, of February 27, last amended by Decree-Law No. 102-B/2020, of December 9.

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15. The Municipal Police of Ponta Delgada is, under the terms of article 5, no. 1, point d) and no. 3, point b) of Decree-Law no. 44/2005, of 23 February, the entity responsible for supervising compliance with vehicle parking and road traffic regulations, including the reporting of traffic accidents, in the territorial area of the Municipality of Ponta Delgada.

16. In accordance with subparagraph d) of paragraph 2 of article 27-E of the regime relating to the Motor Vehicle Registration, the personal data of the vehicle registration must be communicated, for the pursuit of the respective attributions, to the entities responsible for enforcement of the Highway Code. Paragraphs 2, 3 and 7 of article 27, E of the same diploma also allow these entities to be authorized to consult data transmission lines, provided that security guarantees are observed and subject to the signing of a protocol. .

17. Thus, there is a legitimate basis for this processing of personal data, in terms of access, under Article 6(1)(e) of the GDPR.

18. The rule of mandatory indication of the process number that supports access as a condition for the continuation of the research and consequent access to data is highlighted as positive and essential.

19. With regard to records for auditing purposes (logs), mentioned in paragraph 2 of Clause 2.a, the wording of the protocol is equivocal, regarding the type of logs referred to. Indeed, on the one hand, it is not stated whether there is a record of logs of individual users, allowing the access and activity of each worker to be monitored (despite declaring that each one is responsible for the use they make of the service) and who records and maintains it. this information.

20. On the other hand, the protocol does not contain any reference to the existence of application user logs, nor to their conservation periods.

21. In fact, the wording of paragraph 2 of clause 2.a is unclear as to who records what and who is responsible for making and maintaining audit records or their content. In this sense, the text of the protocol must establish that it is the IRN itself, via IGFEJ, that monitors accesses to its database for auditing purposes, recording for this purpose, at least, the identification of the individual user associated with the application user, the date and time of access, the data entered for the survey, and the response returned. This is regardless of the fact that the IRN may also require the Ponta Delgada Municipal Police to make the same registration on its side for the purpose of controlling the actions of its users by the company.

22. Also with regard to users, the protocol must provide, possibly by adding to clause 5.a, that the Ponta Delgada Municipal Police undertakes to maintain, at all times, an updated list of

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users, which is communicated to the IRN/IGFEJ at the beginning of the protocol execution and afterwards whenever there are changes to this list, adding or deleting users.

23. As regards the security measures envisaged for the transmission of data, as well as the obligation provided for in paragraph 3 of Clause 3.a, they appear generally to be appropriate.

24. Regarding the participation of the 1GFEJ as a party to this protocol, the CNPD considers this to be fully justified, given its attributions, provided for in article 3 of Decree-Law No. 164/2012, of 31 July.

III. Conclusion

25. The CNPD considers that there is legitimacy for the Ponta Delgada Municipal Police to have access to personal data from the vehicle registration, within the limits and conditions recommended by this protocol, with the changes resulting from this opinion.

26. Thus, the clause must specify which entity records the accesses of individual users and the application user and specify the content of these records.

27. The protocol must also provide that the Ponta Delgada Municipal Police undertakes to maintain, at all times, an updated list of users, which is communicated to the IRN/IGFEJ at the beginning of the execution of the protocol and afterwards whenever there are changes to the that list, adding or deleting users.

Approved at the meeting of September 6, 2022

Filipa Calvão (President)