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CNPD

National Data Protection Commission

OPINION/2021/158

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 Municipal Police of Vila Nova de Gaia (PMVNG) 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 3 and 4, no. 2, of Law No. 58/2019 , of the 8th of August.

3. The IRN, the Institute for Financial Management and Justice Equipment, I.P. are parties to the protocol. (IGFEJ), and the Vila Nova de Gaia City Council.

4. Pursuant to Clause 1a of the protocol, PMVNG is authorized to access vehicle registration information by online consultation of the respective database, located at IGFEJ, for the exclusive purpose of pursuing the competence legally entrusted to it, namely within the scope of monitoring compliance with parking and road traffic regulations.

5. The following data are accessed: name, habitual residence, identification document number and date and tax identification number, when available, or company name, registered office and number of legal person, owner, lessee or usufructuary, and also the encumbrances or charges (paragraph 1 of Clause 1a).

6. Access to the database is made by vehicle registration and must identify the case number or the news report to which they refer, without which the searches will not be able to proceed (cf. no. 1 of Clause 2. The).

7. Accesses are recorded in the system (logs) for two years for audit purposes.

8. Access is processed through two types of channel, alternatively, in both cases with the implementation of IPSEC tunnels to ensure data confidentiality.

9. Pursuant to Clause 3.a of the protocol, PMVNG must comply with the legal provisions contained in the RGPD and Law No. not using the information for other purposes; not to transmit the information to third parties; to take the

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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 PMVNG uses the subcontractor to execute the protocol, it will be bound, namely, to guarantee the security of the treatment, to ensure that the people involved assume a confidentiality commitment and to inform 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. Also under the terms of the protocol, PMVNG undertakes to previously communicate to the IRN the identification of the end users, «by indicating the name, category/function, e-mail address, and NIF» to assign individual access credentials to the system, which you will receive in a closed letter. The IRN forwards requests for creating and changing users to the IGFEJ (cf. Clause 5a)

12. The IGFEJ also assigns the PMVNG an application user and respective password to access the web services, with records (logs) being made of each invocation carried out in this scope, which are kept for a period of two years for audit purposes.

13. The protocol is concluded for a period of one year, tacitly extendable for equal periods. The termination of the protocol implies the immediate termination of the access authorization (cf. clauses 10:a and 11.a).

14. This protocol enters into force on the date of its signature and replaces the protocol signed on 11 July 2014 (cf. Clause

13.a).

II. Analysis

15. Pursuant to subparagraph d) of no. 2 of article 27-D of Decree-Law no. 54/75, of 12 February, a diploma that regulates car registration, the vehicle registration may be communicated, in order to carry out their respective attributions, to the entities responsible for supervising compliance with the provisions of the Highway Code and complementary legislation.

16. Also in accordance with paragraphs 2 and 3 of article 27-E of the same diploma, these entities may authorize the consultation of data transmission online, provided that security guarantees and subject to the conclusion of a protocol that defines the limits and conditions of access.

17. The possibility for PMVNG to access the car registration derives from the combined provisions of Articles 4(1)(b) and 5(1) of Law 19/2004 of 20 May (Municipal Police Law), and article 5, no. 1, point d), and no. 3, point b), of Decree-Law no. its current wording, which attribute

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competence of the municipal police to supervise compliance with the provisions of the Highway Code and complementary legislation in the territory of the respective municipality, on public roads under the jurisdiction of the municipal council.

18. To that extent, it is considered that there is a legitimate basis for this processing of data, in the form of access, under Article 6(1)(e) of Regulation (EU) 2016/679, of April 27 - General Data Protection Regulation (GDPR).

19. Regarding the communication of individual users of the Municipal Police to the IRN, the CNPD verifies that the requested personal data were extended in this protocol. Thus, in addition to the name and category/function, it is also foreseen that the user's email address and TIN will be communicated to the IRN.

20. No justification is given for the request for these personal data and, in fact, it is not possible to see the relevance of the processing of these data by the IRN for the purposes indicated in Clause 5.a, that is, for the purpose of assigning the name of username and password.

21. Regarding the "email" data, it is accepted that there may be reasons, not indicated, that support the collection of this personal data, namely if the email address is used as a username. If that is the case, the CNPD understands that such a solution should be rethought, since the (professional) email address is a personal data known to a wide universe of people, which immediately weakens an authentication composed of two elements . If the "email" data is collected for the purpose of individualized contact within the scope of user management (for example, password recovery), then this purpose must be specifically provided for in the text, and it must be added that it is the email address professional electronic device, as only this should be used in this context.

22. Regarding the "NIF" data, which constitutes an identification number of citizens for tax purposes, it is not possible to understand the collection by the IRN of this personal data from users, whose access to the car registration is carried out in their capacity as agents of the Municipal Police and the exercise of legal powers in a professional context.

23. Therefore, the CNPD considers that it is not only appropriate and necessary to collect the TIN from users for the purpose of attributing access credentials, in violation of the principle of data minimization, recognized in article 5, no. 1(c) of the RGPD, as none of the legal conditions provided for in article 6(1) of the RGPD are met, so the IRN has no legitimacy to process the NIF of Police users Municipality who access the car registration in the performance of their professional duties.

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24. Also regarding the way in which the accesses of individual users are registered, and given that the accesses of the webservice are also registered, as a generic user, the text of the protocol is not clear on whether the webservice logs register the generic user associated with the individual user, allowing the IRN, through IGFEJ, to always know which individual user accessed, when and to what information; or if the records of individual users are made by the Municipal Police and the IRN only records the accesses of the generic user. The text of the protocol should be unambiguous on this point, that is, when it is

stated that accesses are recorded for auditing purposes, it should indicate who makes these records and, accordingly, how they are controlled.

25. As regards the security measures envisaged for the transmission of data, they appear generally to be appropriate.

26. Regarding the participation of the IGFEJ 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

27. The CNPD considers that there is legitimacy for the Vila Nova de Gaia Municipal Police to have access to personal data from the car registration, within the limits and conditions recommended by this protocol, with the changes resulting from this opinion.

28. Thus, the CNPD understands that the need to process the data "email" must be reconsidered and, if its need is justified, the text of the protocol must specify that it is a professional email and for what purpose it is treated.

29. With regard to the processing of the "NIF" data, the CNPD considers that the IRN does not have the legitimacy to process this personal data of users in the context of the performance of their professional functions, so that the text of the protocol must be amended in accordance.

30. Finally, the clause must specify which entity records the individual accesses of users for auditing purposes.

Approved at the meeting of December 21, 2021

Filipa Calvão (President)