

National Data Protection Commission

OPINION/2021/154

I. Order

1. The Institute of Registries and Notaries, I.P. (IRN) requested the National Data Protection Commission (CNPD) to issue an opinion on a protocol aimed at regulating access to VITRUS AMBIENTE, EM, S.A. (VITRUS) to the car registration.

2. The request is made under subparagraph d) of paragraph 2 of article 27-D and paragraphs 2, 3 and 7 of article 27-E of Decree-Law n° 54 /75, of 12 February¹, diploma that defines the Motor Vehicle Registration Regime.

3. The IRN, the Institute for Financial Management and Justice Equipment, I.P. are parties to the protocol. (IGFEJ) and VITRUS AMBIENTE, EM, S.A. (VITRUS).

4. Pursuant to Clause 1,a of the Protocol, VITRUS 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 that is legally committed , by delegation of the Municipality of Guimarães, within the scope of monitoring compliance with the provisions of the Highway Code and other complementary legislation, on public roads, including limited-time parking and car parks, in the area of said Municipality.

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 or lessee or usufructuary by date of occurrence fact, and when technically available' (Article 1(1)).

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

7. For audit 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.

8. Under the terms of Clause 3.a of the protocol, VITRUS must comply with the legal provisions contained in Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, on the protection of individuals with regard to concerns the processing of personal data and the free movement of such data and which repeals Directive 95/46/EC (General

Regulation on Data Protection) and Law No.

' In the wording given by Decree-Law No. 182/2002, of 20 August.

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August, namely with regard to respecting the purpose for which the consultation was authorized, which should 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.

9. It is also foreseen, in the same clause, that, if VITRUS uses the subcontractor to execute the protocol, it is bound, namely, to guarantee the security of the treatment, to ensure that the people involved assume a confidentiality commitment and to give knowledge 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.

10. Access is carried out through two types of channels, alternative, in both cases with implementation of IPsec tunnels, to guarantee data confidentiality.

11. Also under the terms of the protocol, VITRUS undertakes to previously communicate to the IRN the identification of the users of access to the database, by indicating the name, category/function and NIF, with a view to attributing connection credentials to the system, and each user will receive, in a closed letter, a personal password, which will make him responsible for the use he makes of the service. IGFEJ will assign an application user and respective password to VITRUS to access the web services provided.

12. The protocol is concluded for a period of one (1) year, tacitly extendable for equal periods.

II. appreciation

13. 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 a) of paragraph 3 of article 5 of Decree-Law no. 44/2005, of 27 February, last amended by Decree-Law No. 146/2014, of 9 October.

14. VITRUS is, under the terms of article 5, no. 1, point d) and no. 3, c) of Decree-Law no. 44/2005, of 23 February, the Public Entity Company responsible for supervising compliance with vehicle parking and road traffic regulations, including the participation of traffic accidents, in the territorial area of the Municipality of Guimarães, including powers for the instruction and decision of road misdemeanor procedures, including the application of fines, within the scope of Decree-Law no. 107/2018, of 29 November and through the delegation of powers from the Municipality to the aforementioned municipal company.

15. 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 supervision of the Highway Code. Also paragraphs 2, 3 and 7 of article 27-E of the

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The same diploma allows these entities to be authorized to consult data transmission lines, provided that security guarantees are observed and subject to the signing of a protocol.

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

17. Regarding the communication of individual VITRUS users to the IRN, the CNPD verifies that in addition to the name and category/function, it is also foreseen that the user's tax identification number (NIF) will be communicated to the IRN.

18. No justification is given for the request for this personal data and, in fact, it is not possible to see the relevance of the processing of this 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.

19. The "NIF is an identification number of citizens for tax purposes, not including the collection by the IRN of that personal data of users, whose access to the car registration is carried out in the exercise of legal competences in a professional context.

20. Therefore, the CNPD considers that it is not only appropriate and necessary to collect the NIF of 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 VITRUS users who access the car registration in the performance of their professional duties.

21. 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 registrations of individual users are made on the side of VITRUS and the IRN only registers the accesses of the generic user. The text of the protocol should be clear 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.

22. The IGFEJ's intervention in this protocol stems from the attribution provided for in subparagraph m) of paragraph 2 of article 3 of Decree-Law no. 164/2012, of 31 July.

23. With regard to security measures, without prejudice to the need for permanent verification of their compliance, they appear to be appropriate.

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II. Conclusion

24. The CNPD considers that VITRUS has legitimacy for accessing personal data from the car registration, within the limits and conditions recommended by this protocol, with the changes resulting from this opinion.

25. Thus, the CNPD understands that the IRN does not have the legitimacy to process the users' personal data "NIF" in the context of the performance of their professional functions, so the text of the protocol must be amended accordingly.

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

Lisbon, December 15, 2021

Maria Cândida Guedes de Oliveira (Rapporteur)