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NATIONAL COMMISSION

DATA PROTECTION

OPINION/2020/10

The Institute of Registries and Notaries, I.P. (IRN) has requested the National Data Protection Commission (CNPd) to issue an opinion on a protocol that aims to regulate the access of the Municipality of S. Pedro do Sul (CMSPS) to car registration, for the purpose of monitoring compliance with the Highway Code and complementary legislation on public roads under its jurisdiction.

The request is made under paragraph 7 of article 27,[°]-E of Decree-Law n.° 54/75, of 12 February¹, which regulates car registration.

The IRN, the Institute for Financial Management and Justice Equipment,

I.P. (IGFEJ), the General Secretariat of the Ministry of Internal Administration (SGMAI), the National Road Safety Authority (ANSR) and the Municipality of S. Pedro do Sul.

Under the terms of Clause 1 of the protocol, the CMSPS «is authorized to access vehicle registration information by consulting the respective database», located in the IGFEJ, for the «exclusive purpose of pursuing the competence legally entrusted to it in supervision of compliance with the provisions of the Highway Code and complementary legislation».

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

Access is made in real time, through the Traffic Offenses System - SCoT², under the responsibility of ANSR, through communication via webservices³ the technological infrastructures of the Ministry of Justice and the Ministry of Internal Administration, supported respectively by IGFEJ and SGMAI .

¹ As amended by Decree-Law No. 182/2002, of 20 August.

² This system, in order to dematerialize management of administrative offense records, allows the processing and remote access to information from mobile devices.

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To this end, the IGFEJ will grant access accreditation to the ANSR, as the SCoT manager, which, to that extent, manages the individual users of the system, assigning them the SCoT access accreditations.

Therefore, for audit and security purposes, ANSR, through SGMAI, undertakes to send to IGFEJ, in each transaction, the identification of the user who wants to access the information, the case number or the corresponding notice, in addition to of the other audit data, which are established by the IRN and the IGFEJ. Searches can only be done by vehicle registration.

There are also records (logs) of the accesses made, which are kept for a period of two years for audit purposes (cf. Clause 2.a).

Pursuant to Clause 3.a of the protocol, the CMSPS must comply with the legal provisions contained in the RGPD and Law No. 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. It is also foreseen that if the CMSPS 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 commitment to confidentiality and to inform the IRN of all the necessary information. 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.

Also under the terms of the protocol, CMSPS and ANSR undertake to control the access of users of information, through individual access accreditation, and both entities and SGMAI must establish internal rules regarding the security and confidentiality of the data provided. As the entity authorized to access the vehicle registration database, CMSPS is solely responsible for accessing the information and its subsequent use (cf. Clause 5.a).

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I - Appreciation

1. Under the terms of subparagraph d) of no. 2 of article no. 27-D of Decree-Law no. 54/75, personal data from the car

registration may be communicated, in order to carry out the respective attributions, the entities responsible for monitoring compliance with the provisions of the Highway Code and complementary legislation.

2. 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.

3. The possibility for CMSPS to access the car registration derives from the combined provisions of Article 5(1)(d) and No.3(a) of Decree-Law No. 44/2005, of February 23.

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

5. Regarding the conditions of legitimacy for carrying out access through the SCoT and for the intervention of the ANSR, these are considered to be met, insofar as, as provided for in paragraph 1 of article 2 of Regulatory Decree no. 28/2012, of 12 March, the ANSR's mission is to "enforce the road traffic administrative law". It is also responsible, under the terms of subparagraph e/ of no. 2 of the aforementioned article, "to ensure the processing and management of the records raised for violations of the Highway Code and complementary legislation". To this end, it owns, coordinates, manages and finances the SCoT, in accordance with the provisions of Joint Order No. 19081/2008, of 17 July.

6. Also within the framework of the transfer of powers to local authorities, approved by Law No. 50/2018, of 16 August, came Decree-Law No. 107/2018, of 29 November,

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implement the transfer of powers to municipal bodies in the field of public parking, providing in its article 4(1)(a) that the SCoT is used 'for the collection of administrative offences'.

7. Given that the IGFEJ only provides accreditation for a generic user (the ANSR) and not for individual users, who are managed directly by the ANSR, it is considered an adequate safeguard measure, by the IRN, to require that the identification of the user is provided, as well as the information regarding the case number or notice that triggers the search, as it allows him, on the one hand, to know the individual user for audit purposes and, on the other hand, to prevent the realization of

unjustified access, exercising better access control.

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8. It should be noted that, under the terms of paragraph 4 of article 27-H of the decree-law that regulates the car registration, the entities that can consult the car registration, in this case CMSPS ((they undertake to maintain an updated list of persons authorized to access the databases.” Although this is a legal obligation that derives expressly from the text of the law, the CNPD understands that its transposition to Clause 5.a of the protocol, in addition to paragraphs s 1 and 2, may have a potentiating effect on compliance.

9. In paragraph 3 of Clause 3.a of the protocol, there seems to be a clear wording error in which, in the subject of the sentence, the CMSPS is replaced by "Law No. 58/2019", stating that the law is bound to ensure compliance with the necessary technical and organizational measures. This provision must be amended accordingly.

10. As regards the security measures foreseen for the transmission of data, as well as the obligation provided for in paragraph 3 of Clause 5.a, they seem generally appropriate.

11. 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. Likewise, the participation of SGMAi is based on the powers conferred on it by subparagraphs a) and d) of paragraph 9 of article

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2 of Regulatory Decree No. 29/2012, of March 13, as amended by Decree-Law No. 112/2014, of July 11.

II - Conclusion

The CNPD considers that the City Council of São Pedro do Sul is entitled to access personal data from the car registration, within the limits and conditions recommended by this protocol, and therefore understands that there is no impediment to its execution.

Approved at the plenary meeting of February 4, 2020

Filipa Calvão (President)

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