

I. Order

1. On May 18, 2021, the National Data Protection Commission (CNPd) received a request for an opinion on the authorization request submitted by the Guarda Nacional Republicana (National Republican Guard) by determination of the Assistant Secretary of State and Internal Administration (GNR), for the use of a video surveillance system for the prevention and detection of forest fires in the municipalities of the Porto Metropolitan Area.

2. The CNPD considers the request under the terms of paragraph 2 of article 3 of Law no. 1/2005, of 10 January, amended and republished by Law no. 9/2012, of 23 February (hereinafter, Law No. 1/2005), which regulates the use of video cameras by security forces and services in public places of common use, for capturing and recording images and sound and their subsequent processing.

3. The request is accompanied by a document containing the grounds for the request and the system's technical information, hereinafter referred to as "Rationale", as well as the data protection impact assessment (AIPD).

II. appreciation

i. Object of the opinion to be issued under the terms of article 3 of Law No. 1/2005, of 10 January

4. Pursuant to paragraph 2 of article 3 of Law no. 1/2005, the CNPD's opinion is limited to pronouncing on the compliance of the request with the rules regarding the security of the treatment of the collected data, as well as as well as about the special security measures to be implemented, adequate to guarantee entry controls on the premises, data carriers, insertion, use, access, transmission, introduction and transport and, as well as verification of compliance with the duty of information and before whom the rights of access and rectification can be exercised.

5. Pursuant to the provisions of the same legal precept and paragraphs 4, 6 and 7 of article 7 of that law, the CNPD's opinion is also subject to respect for the prohibition of installing fixed cameras in areas that, despite being located in public places, are,

by their nature, intended to be used in guarding or the use of video cameras when the capture of images and sounds covers the interior of an inhabited house or building or its dependence, or when this capture affects , directly and immediately, the privacy of people, or results in the recording of conversations of a private nature.

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6. The CNPD must also verify that all persons appearing in recordings obtained in accordance with this law are guaranteed the rights of access and elimination, with the exceptions provided for by law.

7. Pursuant to paragraph 7 of article 3 of the same law, the CNPD may also formulate recommendations with a view to ensuring the purposes set out in the law, subjecting the issuance of a totally positive opinion to the verification of the completeness of the fulfillment of its recommendations.

ii. The video surveillance system and its impact on privacy

8. It is intended to use a video surveillance system consisting of 33 cameras to be installed in 11 surveillance towers in the municipalities of Vila do Conde, Santo Tirso, Maia, Vila Nova de Gaia, Valongo, Paredes, Gondomar, Vale de Cambra and Arouca. The purpose of its use and the processing of personal data associated with it is forest protection and the prevention and detection of rural fires (forests) and the safeguarding of people and goods in the forestry, pursuant to paragraph f) of no. 1 of article 2 and article 15 of Law No. 1/2005.

9. It is stated in the Grounds that the necessary authorizations have been collected from the owners in cases where the land on which the cameras are intended to be installed is private property, in accordance with the provisions of paragraph 2 of article 15 of the same legal diploma .

10. It is specified that 3 cameras will be affixed to each tower: a video camera with image collection and transmission (visible

spectrum camera), capable of observing large smoke columns up to 30 km away and with functionalities pari, tilt and zoom (30 times); an «Automatic Fire Detection Camera», with visible and infrared spectrum, therefore also integrating thermal sensors, capable of detecting fires up to 10 km and large smoke up to 30 km away, and with pari, tilt and zoom functions (30 times), and as for the thermal sensor, the zoom capacity is 3 times; and a «Local Security Camera with Image», with fixed orientation to the base of the mechanical support or access to management equipment.

11. It is also stated in the Justification that there is no sound capture and in the AIPD that the «[system] does not allow capturing or recording sound».

12. Although it is not up to the CNPD, under the terms of the legal powers defined in Law no. 1/2005, to pronounce on the proportionality of the use of video surveillance systems in these circumstances, this competence already exists when the cameras are installed in areas that are, by their nature, intended to be used for protection or the capture of images or sound that directly and immediately affects people's privacy, or results in the recording of conversations of a private nature (cf. No. 4 , 6 and 7 of article 7 of Law no. 1/2005, applicable here under the terms of no. 2 of article 15 of the same legal instrument).

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13. Even if it is stated that the cameras are installed in forested areas («and uninhabited, [...] in shadow areas where terrestrial surveillance is inaccessible» - cf. point 4.e.(7) of the Justification) and placed at a considerable height (in most cases, 18-20 meters, but there is a case of 150 meters), the truth is that there are areas that correspond to urban centers (e.g., Maia and Vila Nova de Gaia) and other areas. in which there are roads and buildings nearby, and the equipment has the capacity to capture images up to a distance of 30 km, with rotation capacity (360°) and image magnification (up to 30 times).

14. To that extent, the possibility cannot be excluded that the cameras focus on buildings intended for residential use - which, moreover, is recognized in the Justification (cf. point 4.b., which reads "The maximum range of the devices allows focus on the coverage of dwellings and other buildings by all TARs») - nor exclude that they capture images of individuals and cars, allowing the identification of those and their users.

15. It is strange, moreover, that images from the possible angles of the video cameras were not sent, especially considering

the ease of this collection, since, from the coordinates presented in the Justification, it appears that the cameras will be installed in existing towers or buildings.

16. In the Justification (cf. 4.b.), it is stated that “To minimize the risk of impact on privacy, the application of command and control allows the configuration of blind areas and limited reach depending on the type and distance of the identified in the vicinity of each TAR, making it impossible to violate the rights, freedoms and guarantees of citizens existing in these dwellings». A similar statement is made in the AIPD.

17. Since it is not described or exemplified in what terms the logical filters intended to protect privacy will be applied, the CNPD is unable to assess the real impact of the system on citizens' privacy, especially in urban areas and in certain rural areas with some population density.

18. Special attention also deserves the equipment defined in Annex B of the Justification as AXIS Q8752-E, designated for the automatic detection of fires. From the consultation of the documentation available online about this model¹, it is observed that the aforementioned detection can be parameterized according to images in the thermal spectrum, for example, with the emergence of high temperatures, as well as in the visible spectrum with the detection of smoke columns. in the sky. However, despite referring to automatic detection in the same Annex B, it only states that “by virtue of order No. Automatic Forest Fire Detection systems».

1 At <https://www.axis.com/sv-se/products/axis-q8752-e>

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19. More specifically, in paragraph 1 of the aforementioned Order of the Minister of Internal Administration no. automatic detection of events, namely detection of smoke, fires and heat sources, at any time of day and the respective generation of

alarms».

20. It is noted, however, that it is not clear how the automation will be implemented, and the remaining documentation accompanying the request is also omitted in this aspect. The AXIS Q8752-E ZOOM camera, in addition to having the two capture sensors, has a large image magnification capacity and Artificial Intelligence analytical features for pattern detection, autofocus and sending alerts. The manufacturer provides software, which can be downloaded from the website, compatible with this model and which allows movement detection and identification of people and objects. The AIPD is silent on all this treatment, and therefore this assessment does not fulfill the function assigned to it by law.

21. In view of what has been described and considering that the request, the Justification that accompanies it, as well as the IAPD carried out, are silent as to the terms in which the automatic detection is processed, it is difficult to follow the conclusion reached by the controller of data, in point 4.g.(5) of the Statement of Grounds, that 'it appears impossible to proceed with the eventual identification of the [possibly captured persons]'.

22. Thus, even though the purpose of the video surveillance system does not require, primarily, the processing of personal data, the CNPD understands that the video surveillance system presented here allows the identification of individuals, and the measures aimed at to effectively prevent the impact on their privacy, but only generically stating the intention to adopt measures that meet this objective.

23. Furthermore, with regard to the same camera model, the manufacturer attests, in the information it makes available online, that it is configured to capture sound, simply by attaching a microphone, which contradicts the statement made in the AIPD that the «[the system] does not allow capturing or recording sound».

24. Thus, taking into account the purposes pursued by the installation and use of the video surveillance system and the limits defined in article 7 of Law no. 1 of Order No. 3070/2018, and in accordance with the principle of proportionality in restricting the fundamental rights of citizens, it is essential to define clear rules on the management and configuration of the analytical features of the system (in the automatic fire detection chambers) , prohibiting their use for any function other than the detection of columns of fire and fire outbreaks.

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25. The coupling of any devices that allow the capture of sound must also be prohibited, and the configuration of filters that prevent image capture is also expressly and specifically provided for when the camera focuses on private buildings and immediately surrounding private areas.

iii. subcontracting

26. Regarding the installation and maintenance of the video surveillance system, because it is directly related to information security and the system's ability to fulfill the intended purposes, it is important to underline that this obligation falls on the data controller, regardless of whether who owns the video cameras and other equipment that make up the system.

27. Establishing Law No. 1/2005, in Article 2(2), that the data controller is the security force with jurisdiction in the catchment area or the requesting security service, any subcontracting in company to ensure the maintenance or replacement of equipment must be formalized, contractually, with the GNR. It is also conceivable that the GNR subcontracts the Porto Metropolitan Area, as appears from the stipulations in clause three of the Protocol attached to the Rationale (cf. Annex D), which it may also subcontract to companies, under the terms regulated in article 28 of the Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016 - General Regulation on Data Protection (GDPR) - and article 23 of Law No. 59/2019, of 8 April August. What cannot be a reversal of roles, leaving the GNR without the domain or control of the processing of personal data that the video surveillance system performs.

28. It is therefore important that a contract or agreement be signed that specifically regulates this subcontracting relationship, binding the Porto Metropolitan Area, in accordance with Articles 23 of Law No. 59/2019 and 28 of the GDPR - which in this case does not seem to occur, since the text of the protocol attached to the Justification is insufficient in this perspective.

29. It should be noted that, with regard to the conservation of recorded data, it is stated in the Justification accompanying the request (cf. 4,h.) that access [...] by maintenance technicians [...] will always be authorized and accompanied by the same administrators, i.e., the GNR military who administer the system. This is an important provision, which must be included in the aforementioned subcontracting agreement. In any case, this access will be addressed, below, in point 40 of this opinion.

30. Specifically regarding subcontracting, it is recalled that under the terms of the aforementioned articles, they depend on the prior authorization of the person in charge.

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iv. The visualization of images by third parties

31. As stated, the images captured by the cameras are transmitted to the Territorial Command of the GNR of Porto, where centralized management and control will be carried out. The images are accessible by GNR operatives in the situation room of the Territorial Command of Porto and the Territorial Command of Aveiro - cf. 4.g.(2) of the Grounds.

32. It is also stated, in the Justification accompanying the request, that the images are still transmitted to the operations room of the District Centers for Relief Operations (CDOS) in Porto and Aveiro for the operation of the Maintenance and Information Exploration Teams (EMEIF) of the GNR, «with no data transmission to any other location».

33. However, in point 4.g.(9) of the Justification, it is explained that the visualization of the images in real time is available, not only to the GNR military in the Territorial Commands of Porto and Aveiro and in the CDOS of Porto and Aveiro, but also «Elements of the Civil Protection structure in the CDOS (ANEPC) of Porto and Aveiro (for TARs with coverage in the territory)» and «Elements of the Civil Protection structure in the Municipal Civil Protection Services of the Municipalities of Porto and de Aveiro members of the AMP»(Porto Metropolitan Area).

34. Despite the knowledge of the local authority, maximum municipal, and the ANEPC's duties in terms of civil protection, there is no doubt that Law No. 1/2005, in article 15, only recognizes the possibility of installing and use by the competent security forces of electronic surveillance systems, by means of digital, video or photographic cameras, to capture data in real time and respective recording and processing for the purpose of safeguarding the safety of people and goods in the forestry field and improving the conditions for preventing and detecting forest fires.

35. It is insisted, the law still in force, restricts the security forces, not only the installation of the electronic surveillance system, through digital, video or photographic cameras, but also its use, in order to, among other functions, ensure the activation of

civil protection mechanisms. In other words, this law does not admit groups of users other than those that are part of the competent security forces.

36. In these terms, considering that from the elements made available and especially considering the different functionalities of the cameras that make up the video surveillance system in question, it is not possible to eliminate the risk of capturing images of people who, due to the temporal and location context, can be identified, so the CNPD does not see how the limits defined in article 15 of Law no.

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37. Thus, and in accordance with the provisions of paragraph 1 of article 15 of Law no. 1/2005, the CNPD can only conclude that the visualization of images captured by the video surveillance system by the 'Elements of the structure Protection in the CDOS (ANEPC) of Porto and Aveiro (for TARs with coverage in the territory)» and «Elements of the Civil Protection structure in the Municipal Civil Protection Services of the Municipalities of Porto and Aveiro that are part of the AMP».

38. It is also noted that the statement - contained in point 4.g.(10) of the Grounds, also reiterated in clause five of the Protocol in Annex D - according to which '[considering that the law only provides for the existence of forestry video surveillance systems and not for combat support, the GNR can, in combat periods, direct the cameras to the places suggested by the CDOS, at the request of the same», lacks a specific legal basis that is not identified here (limit, in the legal provision of the admissibility of acting in a state of need).

v. Video surveillance system security

39. Given that the transmission of images is done through a radio communication network (point-to-point), the transmitted video signal must be encrypted (e.g., proprietary codec) in terms that allow the Territorial Command of the GNR of Porto receive and record the images.

40. It is indicated in the Grounds for the request - cf. point 4.h.(1) - that «the architecture of the image recording system will not allow access to the recorded images from remote connections». However, it is then stated “the only exception being local or remote access by maintenance technicians”.

41. However, it is useless to have a segregated and isolated network if a communication channel is occasionally opened on

the Internet, thus exposing the system to the vulnerabilities of an open network. Indeed, it is essential to ensure that the support and maintenance services for the video surveillance system are provided physically on site, and remote access is not admissible as it can compromise security.

saw. Integrity and auditability of the processing of personal data

42. For the purposes of criminal investigation, the collection of evidence is foreseen for communication to the Public Prosecutor's Office, but it is not described how the extraction of images is processed and how the images are preserved. In this regard, it is important to emphasize that the video surveillance system management software must have mechanisms that make it possible to export in digital format, digitally signed, attesting to the veracity of its content. And encryption mechanisms must also be foreseen, if exporting is to be protected, with an access password or other security factor.

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43. Also for the same purpose, it is essential that the system includes a date/time synchronization service (NTP) that allows the synchronization of equipment with the Management and Control Center and between them.

44. It is noted that the auditability of a system depends on ensuring that it has the details of the operation carried out, so that it is possible at all times to know who and what has been done with the personal data. In fact, in the same sense, Resolution of the Council of Ministers No. 41/2018, of March 28, points out, which also determines the implementation of this requirement by the services of the Direct and Indirect State Administration. It provides for the obligation to record all actions that a user performs on personal data, including pan, tilt and zoom operations and access attempts, as well as the obligation to guarantee their integrity, through a digital signature and TimeStamp.

45. For a better understanding of what is being said, take the following example: it is not enough to record that there was an

action on a filter or mask, it is necessary to specify whether it was placed, removed or changed.

46. The CNPD recommends that a policy be defined for retaining traceability records and key indicators for audit reports, in terms of monitoring security in accesses and operations carried out, underlining the importance that chronological records are regularly subject to analysis, under penalty of not fulfilling their function of enabling the detection of failures and anomalies

III. Conclusion

47. The video surveillance system that the GNR intends to use for the purpose of preventing and detecting forest fires in the municipalities of the Porto Metropolitan Area, although its main purpose is to monitor uninhabited and difficult to access forest areas, it also affects urban and rural areas with some population density, being able to capture and record images of buildings intended for housing, as well as individuals and vehicles, presenting technical characteristics and functionalities that allow the identification of those and their users.

48. In particular, one of the types of cameras to be used has Artificial Intelligence analytical features for pattern detection, automatic focus and sending of alerts, being provided by the manufacturer software that can be downloaded from the website and that allows motion detection and identification of people and objects.

49. Since it is not demonstrated in the process, nor exemplified, in which terms will be applied filters or logical masks intended to protect privacy, the CNPD cannot assess the real impact of the system

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of video surveillance in the privacy of citizens, for the purpose of verifying compliance with article 7 of law no. 1/2005.

50. Thus, taking into account the purpose of installing and using the video surveillance system, the requirements imposed by the principle of proportionality in the restriction of fundamental rights to privacy and protection of personal data, and other legal and regulatory limits, the CNPD considers it essential:

The. the prior definition of express and clear rules on the management and configuration of the analytical functionalities of the system, prohibiting their use for any function other than the detection of fire columns and fire outbreaks;

B. the prohibition of coupling any devices that allow the capture of sound;

ç. the configuration of (logical) filters that prevent image capture when the camera focuses on private buildings and

surrounding private areas.

51. The CNPD also recommends that the intervention of the Porto Metropolitan Area as a subcontractor of the GNR, as well as any subcontracting companies, be expressly and clearly defined in a contract or agreement, pursuant to Article 28 of the RGPD and Article 23. of Law No. 59/2019.

52. The CNPD points out that it still does not find a legal basis for the images captured and transmitted to be viewed in real time by entities other than the GNR military, since paragraph 1 of article 15 of Law no. 1/2005 limits the users of the video surveillance system to the competent security forces.

53. Finally, the CNPD recommends that measures be adopted capable of guaranteeing the security of the system and the integrity and auditability of the processing of personal data, as indicated above, in points 39 to 46.

Lisbon, August 10, 2021

fclipa Calvão (President, who reported)

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