

National Data Protection Commission

OPINION/2021/55

I. Order

1. O Instituto dos Registos e do Notariado, 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 Ourém (CMO) to 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 February<sup>1</sup>, 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 the Municipality of Ourém.

4. Under the terms of Clause 1.a of the Protocol, the Municipality of Ourém is authorized to access vehicle registration information by consulting the respective database, located on the IGFEJ, for the exclusive purpose of pursuing its competence legal, within the scope of monitoring compliance with the provisions of the Highway Code and other complementary legislation, on public roads, including parking, under the jurisdiction of the Municipality of Ourém.

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 and also the encumbrances and charges' (No. 1 of Clause 1a).

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 of the administrative offense report to which they refer (cf. no. 1 of Clause 2.a).

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, the Municipality of Ourém 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 persons individuals with regard to 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. 58/2019, of 8 August, in particular with regard to respecting the purpose for which the

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

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consultation, 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 the CMO 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 commitment to confidentiality 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, the CMO 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. OIGFEJ will assign an application user and respective password to the CMO 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. Just as a preliminary note, alert to the fact that there is a gap at the end of the preamble of the draft protocol, referring to

the Motor Vehicle Ownership Regime when it seems that it is intended to affirm Motor Property Registration.

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 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.

15. The Municipality of Ourém is, under the terms of Article 5(1)(d) and(3)(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 Ourém.

16. In accordance with subparagraph d) of paragraph 2 of article 27-E of the regime relating to the Car Registration, personal data from the car registration must be communicated, in order to carry out the respective attributions, to the

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entities responsible for supervising 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 the 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. Paragraph 4 of article 27-H of the regime relating to the Motor Vehicle Registration requires that the entities competent to consult this registration maintain an updated list of persons authorized to access the database. In this way, CMO is obliged to maintain this list, which must be updated in order to limit the possibility of undue access by users who no longer have the legitimacy to access.

19. Naturally, this updating obligation stems from the law, but it must also be included in the present protocol, insofar as it will have a potential effect on its compliance and will allow the IRN, at any time, to determine to the IGFEJ that the credentials of access are disabled.

20. 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.

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

to be appropriate.

fl. Conclusion

22. The CNPD considers that there is legitimacy for the access by the Municipality of Ourém to the personal data of the car registration, within the limits and conditions recommended by the present protocol, so it understands that there is no impediment to its execution.

Approved at the meeting of May 11, 2021

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