

## NATIONAL COMMISSION

## DATA PROTECTION

### I. Order

#### RESOLUTION/2019/619

The Mayor of Porto sent the National Data Protection Commission (CNPd), for prior consultation, the Impact Assessment on Data Protection concerning the “traffic supervision system” of the Municipality of Porto, which was submitted to the CNPD services on October 18, 2019.

The prior consultation and the present determination derive from the attributions and powers of the CNPD, as the national authority for controlling the processing of personal data, provided for in paragraphs 1 and 2 of article 36, points a) and l) of the Article 57(1) and Article 58(3)(2) and subparagraph a) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of article 3, paragraph 2 of article 4 and paragraph b) of paragraph 1 of article 6 of Law no. 58/2019, of August 8th.

### II. appreciation

#### 1. Purposes of the traffic surveillance system

The Porto Municipality's traffic supervision system, on which the Impact Assessment on Data Protection (AIPD) focuses, is composed of 137 cameras, of which 68 are analog cameras<sup>1</sup>, the other being digital cameras, which allow the « real-time visualization of road traffic at critical points of the city's road network structure'». The system does not allow recording of images, nor does it capture sound. However, the system captures and transmits images of people and vehicles that are on the public road, as well as the surrounding buildings, therefore capturing images of people entering and exiting the

<sup>1</sup> The AIPD indicates varying data regarding the number of analogue cameras. In point 3.1, page 13, it is mentioned that “[in] the case of analogue cameras, 68 are interconnected analog-digital (IP)

]. (...) The remaining 4 analog cameras have converters WÊÊKSIÊÊBBKÊÊKf^SBÊSBEÊSUBm' what a pity?

a total of 72 chambers. On the other hand, in section 3.2., page 14, it is mentioned that there are “137 video cameras (68 analogue)”.

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buildings, and even people inside them, many of which are intended for housing.

According to the description of the traffic supervision system contained in the AI PD and considering the number of cameras, the extension of the area of the municipality covered by the system, as well as the characteristics of the cameras, which allow, in particular, to enlarge the image and move the camera in all directions, it can be concluded that it is possible to identify, directly or indirectly<sup>2</sup>, natural persons who are or circulate on the public road or pedestrian street, as well as people who enter and leave buildings and who are inside them. To that extent, the use of the traffic supervision system of the Municipality of Porto implies the processing of personal data, under the terms of paragraphs 1) and 2) of article 4 of the RGPD.

And this processing of personal data can have a very high impact on the private life of people who circulate or are on public roads, allowing the processing of information regarding their location, interactions with other people, the habits of those who regularly circulate in these areas. , and above all behavior inside buildings and even in the dwellings themselves, implying the affectation of the fundamental right to respect for private and family life, enshrined in article 26 of the Constitution of the Portuguese Republic and in article 7 of the Charter of Fundamental Rights of the European Union and Article 8 of the European Convention on Human Rights. And, thus, conditioning the fundamental right of freedom of movement and action. As will be developed below, the measures provided for in the IAPD to reduce the impact on data protection do not immediately rule out, nor do they seem to be able to rule out definitively, the identifiability of persons, thus understanding the submission of the AIPD to prior consultation of the CNPD under paragraph n. 1 of article 36 of the GDPR, as recommended by the Data Protection Officer of the Municipality of Porto.

The legitimacy of the processing of personal data depends on two fundamental factors. The first concerns the existence of a condition of lawfulness of the treatment; the second factor

<sup>2</sup> indirectly, whenever the identification of the natural person is only achieved through the relationship with other available information, for example, in a database, as is the case with the information associated with the vehicle registration data.

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is related to the proportionality of the treatment, taking into account the lawful purpose that it aims to pursue - cf. Articles 5, 6 and 9 of the GDPR.

1.1. With regard to the legal basis, it is important to consider the purpose of the treatment. As stated in the prior consultation request and in the AIPD, the purpose of using this system is to regulate road and pedestrian traffic ("Real-time detection of disturbances in road traffic at critical points of the city's road network; detection in real time of road accidents and other incidents with implications for road traffic and mobility in general; assessment of traffic flows and/or pedestrian circulation flows, monitoring of the road network, lighting and horizontal signaling infrastructures'),

The main purpose of the video surveillance system falls within the competences of the Municipality of Porto, more specifically in the functions and powers of the Municipal Police of Porto regarding the regulation and supervision of traffic on public roads in the municipality of Porto, in accordance with the provisions of paragraph e) of no. 2 of article 3 of Law no. 19/2004, of 20 May, and no. 2 of article 4 of Decree-Law no. 13/2017, of 26 January . To that extent, the legitimacy of the processing is primarily based on Article 6(1)(e) of the GDPR.

It is also intended «the provision of information and/or permission to view in real time civil protection entities (police authorities and rescue facilities), in support of the management of emergency situations, in the case of traffic accidents on public roads that trigger rescue operations and how much the safety of people, property and the environment is at stake'.

This purpose of providing information and/or permission to view images to civil protection entities, in support of the management of emergency situations, does not have an express legal framework, and may, however, be considered admissible, under the terms of the same paragraph. and/of Article 6(1) of the GDPR, as it is recognized that it is still within the municipal powers to intervene in civil protection situations (cf. Article 23(2)(j) of Law no. 75/2013, of September 12, last amended by Law No. 50/2018, of August 16).

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Regarding the reference, in the AiPD, to situations in which the safety of people, property and the environment is at stake, the relevance of these, nor their specific legal framework, is not reached in this context. First of all, considering the prohibition enshrined in subparagraph a) of paragraph 2 of article 19 of Law no. under Law No. 1/2005, of 10 January, amended by Law No. 9/2012, of 23 February. To that extent, it is considered that the purpose of people's safety and heritage protection cannot be pursued by the Porto Municipality's traffic supervision system without complying with the regime provided for in Law No. 1/2005.

Regarding the reference to the environment, although this is also a municipal attribution (cf. point k) of paragraph 2 of article 23 of Law n° 75/2013, already cited), it refers to what then it is said about the second factor, related to the proportionality of the processing of personal data.

Even so, it is important to point out that this assessment of the verification of legal conditions for the processing of personal data regarding some of the purposes envisaged with the use of the traffic supervision system does not exempt from the specific consideration of the processing of data that fall into the category of specially protected data, provided for in Article 9(1) of the GDPR. In fact, despite being stated in point 4.2. of the AIPD that special data are not processed, considering that the system covers several areas of the municipality and there are chambers covering areas where, in particular, places for worship (eg Church of Paranhos), health establishments (eg Instituto Português de Oncologia) and special education establishments (eg Externato Ana Sullivan), it can only be boldly stated, without further ado, that there is no processing of special data. And if there is, as it seems difficult that there is not, processing of special data, then the basis for such processing would also have to be found within the scope of Article 9(2) of the GDPR, which, in this case, is not demonstrated .

1.2. Considering now the aspect related to the proportionality of the treatment for the pursuit of its lawful purposes, and only for these, it is important to bear in mind that it is not enough for the treatment to serve, in the sense of being suitable or adequate, for the pursuit of public interests that fit or correspond to attributions of the Municipality. It still has to

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demonstrate that the processing of personal data is necessary to satisfy those interests, which means demonstrating that there is no alternative solution that is less intrusive or restrictive of the rights and interests of data subjects and also of other public interests that may be felt in the specific case.

However, the main purpose underlying the use of the Porto Municipality's traffic supervision system does not require or depend on the identification or identifiability of the people captured by the cameras. It is enough to pay attention to the description of the main purposes aimed at using the system: « Real-time detection of disturbances in road traffic at critical points of the city's road network; real-time detection of road accidents and other incidents with implications for road traffic and mobility in general; evaluation of traffic flows and/or pedestrian circulation flows, monitoring of the road network, light signaling infrastructure and horizontal signaling.

The same can be said about the accessory purpose of managing emergency situations. The management of emergency situations, in the case of traffic accidents on public roads that trigger rescue operations, clearly does not require knowledge of the identity of the affected persons, nor their identifiability.

In fact, only for the purpose of repressing traffic offenses the identification of the offenders (via the vehicle registration data) would be necessary and, therefore, only in this context would the processing of personal data be justified.

But this purpose is not aimed here by this system, not least because its possible legality would not be sufficient with the framework of the RGPD, also requiring the observance of the regime of the use of video surveillance in public spaces by the security forces, defined in Law no. 1/2005.

A similar conclusion is drawn regarding the use of the road supervision system to protect the environmental public interest. As mentioned, although this is also a municipal assignment, it is good to see that traffic supervision systems cannot be used for any and all public interests. A judgment of proportionality is required here, from the outset, in terms of necessity: if one wants to guarantee the reduction of polluting emissions resulting from the circulation of vehicles on public roads, not only are there more adequate and effective means of monitoring such emissions, but also the taking of

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Decisions about traffic flows do not depend on knowledge of the identity of drivers or vehicle owners. As for the resolution of

specific issues related, for example, with urban cleaning, the excessive nature of the use of a video traffic supervision system for this purpose is evident. In addition, the eventual use of such a mechanism for the purpose of repressing infractions, in this domain, has no legal framework.

1.3. A different question is posed by the use of the traffic supervision system to check the registration of authorized vehicles in areas with limited access to car traffic. This is, in fact, the only purpose, of the many allegedly aimed at, which justifies the need to identify the registration of vehicles and, therefore, indirectly, the identifiability of the natural persons covered by the chambers. However, it is clearly disproportionate to use a video camera system with this scope (comprising more than thirty cameras and covering the municipality of Porto) to fulfill this purpose. So much so that the Municipality of Porto intends, as stated in the information transmitted to the CNPD, for this processing of personal data to be carried out by a different and autonomous camera system from the traffic supervision system.

In this regard, the indication, within the scope of the present traffic supervision system, of a private security company, as a subcontractor, cannot fail to be particularly surprising (cf. 1.4. of the AIPD). There is no obvious connection from the contract, however, there is information in the elements sent by the Municipality of Porto that the registration check of authorized vehicles in areas with limited access to car traffic is being operated by the private security company, and that the is associated with the traffic supervision system.

Attention is drawn to the inadmissibility of access to all images from all areas of the city covered by the traffic supervision system by a private entity subcontracted for a more territorially delimited and therefore much more restricted processing of personal data. . Not only is there no legitimacy for such a processing operation - because the scope of the subcontracting relationship does not go that far - but it is manifestly disproportionate, in breach of Article 5(1)(c) of the GDPR.

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Under no circumstances, it is insisted, will the presence of this subcontracting company be admissible in the room or rooms of transmission of the images by the traffic supervision system.

1.4. Thus, leaving aside the processing of personal data for checking the registration, which cannot be carried out through the traffic supervision system of the Municipality of Porto, there is no question of the adequacy of the placement and use of

cameras in the municipality of Porto for the traffic management purpose and for occasional support for the purpose of managing emergency situations. However, since the need to identify vehicles (which allows the identification of people traveling in them) nor the need to identify or identify the natural persons covered by the cameras' radius of incidence has not been demonstrated, nor is it demonstrable. the use of the traffic supervision system of the Municipality of Porto is not legitimate if it involves the processing of personal data.

To that extent, the Municipality of Porto must adopt measures to ensure that the visualization of images captured by the system does not allow, or only very residually, the identification, directly or indirectly, of the people covered by the cameras. It is also clarified that the CNPD does not comment on instruments or operations for the processing of personal data that were not the subject of a detailed description in the present process, as they are still being designed or under development, as in point 4.7 of the AI PD.

## 2. System characterization

2.1. The traffic supervision system of the Municipality of Porto is based on a centralized administration solution, called (BVMS)

In the architecture presented, the video surveillance cameras transmit the images to the Traffic Control Command (CCT), installed in the Paços do Concelho building located at the

## 3 Solution provided by the manufacturer

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Praça General Humberto Delgado, which acts as a central point for system administration. Analog cameras are connected to the CCT through its own fiber optic network, while digital cameras are connected through the private network of Associação Porto Digital (APD).

In addition to the video surveillance cameras, the system consists of a central server, on which the video management system (BVMS) is based, and 10 individual workstations that access the image system and allow the panning functions to be remotely operated. , ///, zoom (PTZ) of the cameras.

As controls to mitigate security risks, the “controlled use of hardware and software”, the blocking of USB ports (except for mouse and keyboard) and the inhibition of access to the internet network for cameras, individual stations, BVMS server and

system are defined. of records. The individual stations are also configured to perform a daily cleaning routine of the user's profile when logging out.

Regarding the security of the information transmitted through the APD network, there is communication “through point-to-point encryption, with a Virtual Private Network (VP N) access firewall having been installed. ”

The traffic supervision system software allows you to configure 'fixed view mode' and apply 'shading masks' filters.

Data processing provides for the transmission of an image feed to the Command and Operational Control Center of the Porto Metropolitan Command of the Public Security Police (only for viewing and without the ability to operate cameras and/or remove filters and masks).

There is no reference in the AIPD to security risk mitigation measures for PSP systems that access the image feed.

2.2. The images are visualized in real time in two different places, belonging to the Municipality of Porto: in the Integrated Management Center, located at Rua da Constitution, and in the Traffic Control Room, in the Paços do Concelho building (cf. 5.2., of the IAPD).

In fact, at least in the Integrated Management Center, there is a video wall, made up of ten modules, each transmitting images from several cameras simultaneously, being

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viewed not only by Municipal Police officers, but also by workers with skills in the areas of civil protection and the environment.

In this regard, it is important to note that, in the event of the capture and transmission of images capable of identifying the persons covered by them, the processing of personal data carried out by public entities in which the visualization of the images takes place must respect the principles of proportionality and minimization of personal data - pursuant to article 266 of the Constitution of the Portuguese Republic, article 7 of the Code of Administrative Procedure and paragraph c) of paragraph 1 of article 5 of the RGPD. From these principles, it follows that the images can only be viewed by those who actually need such viewing for the purpose of pursuing the purposes legitimately pursued by the traffic supervision system, in a need-to-know logic. It is quite evident that, in this context, only those who have this function would need to use this system for the supervision and management of traffic: the Municipal Police.



In fact, the attribution of traffic regulation is only specified in the two legal diplomas that define the functions and powers of the Municipal Police - Law No. of January 26 -, since in article 23 of Law no. 75/2013, of September 12, that function does not fit in the list of municipal attributions, which is only implicitly covered in the reference to the Municipal Police<sup>4</sup>.

In short, given that the use by the Municipal Police of the traffic supervision system, as it is designed, is not legitimate for the intended purposes, the impact on data protection and privacy would be aggravated if other entities or services (e.g. civil protection services or the environment) had access to the rooms where the images are transmitted.

<sup>4</sup> Incidentally, considering that the main purpose of the processing corresponds to a function that is legally only, within the Municipality, assigned to the Municipal Police, it is not understood that, in the AIPD (cf. point 1.3.), they appear as internal responsible for the treatment of personal data to the Municipal Mobility and Traffic Management Division of the Mobility and Transport Department of the Municipal Mobility and Transport Directorate, and the Municipal Operations Division of the CGI [Integrated Management Center] of the Municipal Directorate of Municipal Services. The internal person responsible for the processing of personal data could only be, under the terms of the law, the Municipal Police.

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Regarding the sharing of images with the Public Security Police (cf. 7.1. of the AIPD), taking into account that this is expressly legitimated by law, under the terms of article 2 of Law No. 19/2004, of 20 May, and article 5 of Decree-Law no. 13/2017, of 26 January, the CNPD has nothing to observe.

3. /4s measures to mitigate the impact on the protection of personal data provided for in the AIPD

In the AIPD, risks to the privacy of people covered by the capture and transmission of images by the traffic supervision system of the Municipality of Porto are identified, and a set of appropriate measures is also foreseen to mitigate the impact on the protection of personal data and on the privacy.

However, it appears, on the one hand, that some of these measures, as will be explained below, are only capable of being applied to digital cameras and, although the future replacement of other (analog) cameras by digital ones is foreseen, this will only occur within a considerable period of time (4 years); on the other hand, even when this occurs, it is still possible, with a reduced degree of difficulty, to identify, directly or indirectly (e.g., registration), the people covered in the images. This is what

we then try to demonstrate.

In addition to the system not recording images, which reduces the impact of using the traffic supervision system, it is foreseen the adoption of pre-configurations in the software, as well as 'shading masks' filters (point 4.4. AIPD). However, these measures are only applicable to digital cameras. In other words, there are at least 68 cameras that capture images of the public road and surrounding buildings, without these mitigating measures being susceptible to being applied to them, and without the adoption of mitigating measures of another nature, e.g., physical barriers.

Therefore, in practically half of the traffic supervision system, the non-identification of people, directly or indirectly, is not guaranteed, nor are measures immediately foreseen to reduce the impact on people's privacy.

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It is true that, within a period of four years, the replacement of analogue cameras is referred to, but clearly the system cannot function until it guarantees a reasonable degree of difficulty in identifying, directly or indirectly, the natural persons covered by the scope of the chambers.

Furthermore, in point 4.4. of the AI PD, there is an "Operational Manual "Rules, Execution Norms and Structure of Procedures of the Integrated Management Center", where the possibility of deactivating the 'shading masks' filter and the 'fixed display mode' is foreseen 'when the benefit and superior interest of the population is clearly proven>. However, the recognition of this possibility deflates the effect of the mitigating measures, mainly due to the generic and imprecise terms with which it is provided.

From the outset, it is doubtful whether it is necessary to look particularly closely at the areas protected by such solutions, because in principle they will correspond to buildings and not to public roads. Mainly because the exemplified situations of benefit and superior interest of the population are related to road accidents, which evidently occur on public roads. And even in these cases, the need to visualize the images is doubtful, even due to the existence of mechanisms, already legally foreseen, to activate the rescue means. For the rest, the remaining situations (protection of people and goods and the environment), as

mentioned above, cannot be covered by this traffic supervision system.

Furthermore, the possibility of enlarging the images and moving the cameras both sideways and up and down («Pan, Tilt and Zoom»)<sup>5</sup> is also foreseen, which makes the use of this system even more invasive. Just think that the zoom can be applied in a traffic accident situation as well as on the entrance of a building or a window of a house. The CNPD thus concludes that the amplification of images and the possibility of moving the cameras increases the risk to privacy, by facilitating the identification, directly or indirectly, of individuals (and even, at the limit, the traceability of their behavior, contrary to the which is supported by point 3.9 of the IAPD).

Furthermore, despite indicating that there is no recording of images and that the machines do not have external recording devices and the USB ports are blocked, the system does not prevent the possibility of taking screenshots. To limit the impact of this possibility, a daily cleaning routine of the machines is foreseen, after the user's log out (cf. 4.11. of the AIPD).

<sup>5</sup> Cf. point 3.1 pages 11 and 13, and point 4.9. of the IAPD.

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However, although the machines do not have an Internet connection, the AIPD is silent about the possibility of using Bluetooth technology to, for example, have the images printed.

On the other hand, there is no policy regarding the use of mobile electronic devices within the image viewing rooms, which makes it possible to capture images (photos or videos) and their subsequent undue disclosure.

Finally, according to point 9.3. of the AIPD, there are still no physical access controls to the traffic control room located in the City Hall, which is not acceptable.

In short, despite the measures provided for in the AIPD, the traffic supervision system of the Municipality of Porto still presents significant risks for privacy and for the protection of personal data, not ruling out the possibility of identifying people or tracking their behavior.

### iii. Conclusion

On the grounds set out above, and under the powers conferred by Article 36(2), Article 58(2)(a) and (d) and by Article 58(3)(a) of Article 58 of the GDPR, the CNPD:

1. Warns the Municipality of Porto to the fact that, in view of the stated purposes and which are lawful within the scope of the

Municipality of Porto's attributions, it is not legitimate to use this Municipality's traffic supervision system for the capture and transmission of images with possibility of identifying, directly or indirectly, the natural persons covered by the chambers, since the identification of the vehicles in which they circulate and the identification or identification of persons is not necessary for those purposes, under the terms of article 266 of the Constitution of the Republic Portuguesa, of article 7 of the Code of Administrative Procedure, and of subparagraph c) 6(1) of article 5 of the RGPD;

2. It concludes that, only to the extent that it is guaranteed, through the adoption and generalization to the entire traffic supervision system of a set of mitigating measures, the

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non-identification of the natural persons covered by the chambers - or, at least, that this identifiability is guaranteed to be residual - is that the use of that system does not violate the legal regime for the protection of personal data; and so,

3. Recommends:

i. The definition, through specific software, by pre-configuration, of fixed viewing modes, with combinations of orientation and pre-defined zoom level, preventing the visualization of images that make it possible to identify both registrations and people who are covered by the range of action of the cameras;

ii. The application of logic masks that prevent the visualization of the interior of residential buildings or other buildings in which it is necessary to guarantee the reservation regarding their attendance (e.g. schools, churches, etc.), without the possibility for users to deactivate them;

iii. The parameterization of change logs of the settings indicated above, in order to detect possible tampering with the measures to reduce the impact on privacy;

iv. The application of physical barriers in the analog cameras that guarantees the same result indicated in subparagraph ii.\

v. Adoption of a mechanism to control access to the image transmission rooms, in order to guarantee that only duly accredited workers have access to the system.

4. After adopting these measures or others with equivalent results, the CNPD understands that there is no processing of personal data, thus not imposing any restriction on the functioning of the Traffic Supervision System of the Municipality of Porto, to be used by the Municipal Police and civil protection services.

5. To the extent that the system has in its genesis the capacity to process images with personal data, attention is drawn to the fact that it is the responsibility of the CNPD, as

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of national authority whose attribution is to supervise compliance with legal and regulatory provisions regarding the protection of personal data, the power to, at any time, supervise the functioning of this system and ensure that the limits and conditions listed above are respected.

Approved at the plenary meeting of December 10, 2019.

Filipa Calvão (President)