

I. Request

1. The Institute of Registries and Notaries, I.P. (IRN) submitted to the National Commission for Data Protection (CNPd) a draft protocol that aims to regulate access by the Municipal Police of Braga (PMB) to vehicle registration, for the purpose of monitoring compliance with the Highway Code and complementary legislation in public roads under the jurisdiction of the respective municipality.

2. The CNPD issues an opinion within the scope of its attributions and powers as an independent administrative authority with authoritative powers to control the processing of personal data, conferred by paragraph c) of paragraph 1 of article 57 of the Regulation (EU) 2016/679, of April 27, 2016 - General Regulation on Data Protection (GDPR), in conjunction with the provisions of Articles 3 and 4, paragraph 2, of Law No. 58/2019, of the 8th of August.

3. The parties to the protocol are the IRN, the Institute of Financial Management and Justice Equipment, I.P. (IGFEJ), and Braga City Council.

4. Pursuant to Clause 1 of the protocol, the PMB is authorized to access vehicle registration information through online consultation of the respective database, located at the IGFEJ, for the sole purpose of pursuing the competence legally entrusted to it, namely within the scope of monitoring compliance with vehicle parking and road traffic regulations, including reporting road accidents, in the territorial area of the Municipality of Braga.

5. The following data are accessed: name, habitual residence, number and date of the identification document and tax identification number, when available, or firm, headquarters and legal person number, of the owner, lessee or usufructuary, and also the encumbrances or charges, by date of occurrence of the fact, and when technically possible (No. 1 of Clause 1a).

6. Access to the database is done by registering the vehicle and must identify the number of the case or the report to which they relate, without which the searches cannot proceed (cf. no. 1 of Clause 2. The).

7. Accesses are recorded in the system (logs) for two years for auditing purposes.

8. Access is carried out via two types of channel, alternatively, in both cases with the implementation of IPSEC tunnels to ensure data confidentiality.

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9. Pursuant to Clause 3 of the protocol, the PMB must comply with the legal provisions contained in the RGPD and Law No. 58/2019, of August 8, namely in terms of respecting the purpose for which the consultation was authorized, 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.

10. It is also envisaged that if the PMB resorts to a subcontractor to carry out the protocol, it will be bound, namely, to guarantee the security of the treatment, to ensure that the people involved assume a confidentiality commitment and to inform 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 this mandate.

11.0 protocol also provides that users can access the database via T-Menu or via webservice. In the first case, the PMB undertakes to communicate in advance to the IRN the identification of the end users, by indicating the name and category/function, email address and NIF for assigning individual access credentials to the system. The IRN forwards this information to the IGFEJ for the creation and alteration of users (cf. no. 1 of Clause 5a). In the second case, the IGFEJ assigns an application user and password to the PMB, with the requirement that each access to the webservice contain the identification (name and username) of the person triggering the invocation. These accesses are recorded for a period of two years for auditing purposes¹ (cf. no. 2 of Clause 5a).

12. This protocol replaces the protocol signed between the IRN and the Municipality of Braga in March 2022.

II. Analysis

13. Pursuant to paragraph d) of paragraph 2 of article nº 27.º-D of Decree-Law no. 54/75, of February 12, the diploma that regulates vehicle registration, the personal data of the vehicle registration may be communicated, in order to carry out their

duties, to the entities responsible for monitoring compliance with the provisions of the Highway Code and complementary legislation.

14. Also in accordance with paragraphs 2 and 3 of article 27-E of the same law, these entities may authorize consultation on-line data transmission, provided that security and safety guarantees are observed. conditioned to the execution of a protocol that defines the limits and conditions of access.

1 Point c) of no. 2 of Clause 5a of the Protocol refers to the user identified in the previous number, when it seems to be intended to refer to the users identified in no. 2, subparagraphs a) and b), that is, the records for audit must contain the identification of the application user and the identification of the nominal end user, in addition to the other elements that must appear in the log.

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15. The possibility for the PMB to access the vehicle registration stems from the combined provisions of articles 4, paragraph 1, subparagraph b) and 5, paragraph 1, of Law 19/2004, of May 20 (Municipal Police Law), with article 5, no. 1, subparagraph d), and no. 3, subparagraph b) of Decree-Law no. 44/2005, of February 23, in its current wording, which assign competence to the municipal police to monitor compliance with the provisions of the Highway Code and complementary legislation in the territory of the respective municipality, on public roads under the jurisdiction of the municipal council.

16. Making access to the vehicle registration possible by signing a protocol with the IRN stems from article 7, paragraphs 1 and 2 of Decree-Law 107/2018, of November 29, which implements the transfer framework powers for municipal bodies in the field of public parking, provided for in article 27 of Law No. 50/2018, of 16 August (Framework law for the transfer of powers to local authorities and inter-municipal entities).

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

18. The protocol foresees that users can access it in two different ways, through T-Menu and through webservice. In the first

case, the IRN holds the list of users, since these are created by the IGFEJ; in the second case, the IRN does not hold this list, although the fact that not only the access of the application user, but also the information regarding the name and username of the final user of the Municipal Police is registered is very positive. However, it is understood that, for the full fulfillment of the control functions of the IRN, as responsible for data processing, the Protocol should contain the obligation for the PMB to keep, updated at all times, the list of its users with a profile of access to the vehicle registration, and respective category/function, in order to be able to fully identify these users at the request of the IRN.

19. Still within the scope of the procedure for creating users, it is not understandable that the IRN collects the "NIF" data, which constitutes a citizen identification number for tax purposes, since access to the vehicle registration is carried out by users in their capacity as agents of the Municipal Police and in the exercise of legal competences in a professional context.

20. Therefore, the CNPD considers that not only is it inappropriate and necessary to collect the NIF of users for the purpose of assigning access credentials, in violation of the principle of data minimization, recognized in article 5, paragraph 1, paragraph c) of the RGPD, as none of the conditions of lawfulness provided for in article 6, paragraph 1, of the RGPD have been verified, so that the IRN has no legitimacy

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treat the NIF of PMB users who access the vehicle registration in the performance of their professional duties.

21. As regards the security measures envisaged for the transmission of data, they appear generally appropriate.

22. As for the participation of the IGFEJ as a party to this protocol, the CNPD considers it to be fully justified, given its attributions, provided for in article 3 of Decree-Law no. 164/2012, of 31 July.

III. Conclusion

23. The CNPD considers that there is legitimacy for the Braga Municipal Police to access personal data from the car registration, within the limits and conditions recommended by this protocol, with the observations in this opinion, and therefore

understands that there is no impediment to its execution.

24. With regard to the processing of "NIF" data, the CNPD considers that the IRN does not have legitimacy to process this personal data of users in the context of the performance of their professional duties, so that the text of the protocol must be amended in accordance.

25. It should also be foreseen that the PMB makes available to the IRN, at its request, the full identification of its users who access via webservice, based on the name and username registered at the time of access.

Approved at the meeting of June 6, 2023

Paula Meira Lourenço (President)