

PAR/2021/104

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CNPD

National Data Protection Commission

OPINION/2021/132

## I. Order

1. O Instituto dos Registos e do Notariado, I.P. (IRN) requested the National Data Protection Commission (CNPD) to issue an opinion on a protocol aimed at regulating access by the Municipality of Moura to vehicle registration.

2. The request is made pursuant to paragraph 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 regulates the car registration.

3. The IRN, the Institute for Financial Management and Justice Equipment, I.P. are parties to the protocol. (IGFEJ) and the Municipality of Moura.

4. Under the terms of Clause 1.a of the protocol, the Municipality of Moura (CMM) is authorized to access the vehicle registration information through online consultation of the respective database, located at the IGFEJ, for the exclusive purpose of pursuing its legal competence, within the scope of monitoring compliance with the provisions of the Highway Code and other complementary legislation, on public roads under the jurisdiction of the Municipality of Moura.

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 by date of occurrence fact, and when technically available'. (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 infraction 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. Pursuant to Clause 3.a of the protocol, the CMM 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 individuals with regard to concerns the processing of personal data and the free movement of such data

1 As amended by Decree-Law No. 111/2019, of 16 August.

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and which revokes Directive 95/46/EC (General Regulation on Data Protection) and Law No. if 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 CMM 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 confidentiality commitment 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 CMM 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. The IGFEJ will assign an application user and respective password to CMM 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 there to the Motor Vehicle Ownership Regime when what is intended to be affirmed is Registration of Motor Vehicle Property<sup>2</sup>.

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 n° 44/ 2005, from 27 February, lastly amended by Decree-Law No. 146/2014, of 9 October.

2 An identical note has been given in the opinions of this nature issued by the CNPD, without the correction of the draft Protocol

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15. Municipality of Moura is, under the terms of article 5, no. 1, point d) and no. 3, point 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 Moura.

16. In accordance with subparagraph d) of paragraph 2 of article 27-D of the Highway Code, personal data from the car registration must be communicated, in order to carry out the respective attributions, to the entities responsible for supervising the Road code. Also paragraphs 2, 3 and 7 of article 27-E of the same diploma allows these entities to be authorized to consult on the data transmission line, provided that 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 Motor Vehicle Registry requires that the entities with competence to consult this registry keep an up-to-date list of persons authorized to access the database. In this way, CMM 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.

### III. Conclusion

22. The CNPD considers that there is legitimacy for the access by the Municipality of Moura to the personal data of the car registration, within the limits and conditions recommended by this protocol, therefore it does not understand there is any impediment to its execution.

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Approved at the meeting of October 6, 2021

Filipa Calvão (President)