National Data Protection Commission

OPINION/2022/107

I. Order

1. By order of the Secretary of State for Internal Administration, an opinion was requested from the National Data Protection Commission (CNPD) on the «application for authorization for the installation and operation of a video surveillance system in the Municipality of Sintra», submitted by the Security Police public (PSP).

2. The request for an opinion was submitted on August 30, 2022, pursuant to Article 5(3) of Law No. 95/2021, of December 29, which regulates the use and access by the forces and security services and by the National Emergency and Civil Protection Authority to video surveillance systems for capturing, recording and processing image and sound.

3. The request is accompanied by a document containing the reasons for the request and the technical information of the system, hereinafter referred to as the "Basicities", as well as the impact assessment on data protection (AIPD).

II. appreciation

i. Purpose of the opinion to be issued pursuant to article 5 of Law No. 95/2021, of December 29

4. Thus, pursuant to paragraph 3 of article 5 of Law No. 95/2021, of December 29 (hereinafter, Law No. 95/2021), the opinion of the CNPD, issued within the deadline set out in no. 4 of the same article (in conjunction with subparagraphs b) and c) of article 87 of the Code of Administrative Procedure), it is restricted to the pronouncement on the compliance of the request with the rules referring to the security of the treatment of collected data and with the provisions of paragraphs 4 to 6 of article 4 and articles 16, 18 to 20 and 22 of the same legal diploma.

5. In accordance with the provisions of these articles, the CNPD's opinion also includes respect for the prohibition of installing and using fixed or portable cameras in areas which, despite being located in public places, are, by their nature, intended to be used in seclusion and even the use of video cameras when the capture of images and sounds covers the interior of a house or building inhabited or its dependency or of hotels and similar establishments, and when this capture affects, directly and immediately, the sphere of the reserve of intimate and private life.

6. The collection and subsequent processing of personal data is also the subject of an opinion by the CNPD, in particular when

carried out through an analytical management system for the captured data, by application of technical criteria, as well as respect for the conditions and limits of conservation of the recordings.

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

ii. The scope and purposes of processing resulting from video surveillance in the municipality of Sintra

8. Although it is not up to the CNPD, under the powers defined in Law No. 95/2021, to pronounce on the proportionality of the use of video surveillance systems in public places of common use, this power already exists when in question are cameras installed in areas that are, by their nature, intended to be used in seclusion, or when they capture images and sound from the interior of the house or building inhabited or its dependence or from hotels and similar establishments, or when the capture of images or sound affects, directly and immediately, the sphere of the reserve of intimate and private life (cf. paragraphs 4 to 6 of article 4 of Law no. 95/2021).

9. At issue is data processing resulting from the application for authorization to install a video surveillance system in the municipality of Sintra, comprising, as stated in the authorization application and in Annex B of the Grounds accompanying the application, 143 chambers. However, in the same Annex B, when the list of councils is presented by area or parish with their exact location, there are 144 councils, distributed as follows:

The. Algueirão-Mem Martins: 29 chambers;

B. Rio de Mouro: 28 chambers;

w. Agualva-Cacém: 21 chambers;

d. Queluz: 41 chambers;

It is. Monte Abraão: 25 chambers.

10. It is therefore important to ensure the coherence of the request and the respective grounds, clarifying the number of councils to be installed in the municipality of Sintra.

11.0 said video surveillance system is intended to protect people, animals and property, in public places or with public access, and to prevent the practice of acts qualified by law as crimes, in places where there is a reasonable risk of their occurrence, in the terms of paragraph d) of paragraph 1 of article 3 of Law no. 95/2021 (cf. Annex A of the Grounds).

12. It should also be noted that, although it is stated in the request that only the recording of images is intended, «[...] not recording sound on this system», there seems to be an intention to capture sound and the specifications described techniques point to the ability of the system to capture and record sound.

13. Indeed, in Annex C of the Grounds (cf. point 4.d.) it is specified as a technical requirement «[the] transmission of images, as well as sound when legally authorized [...]» and, in the table the minimum requirements of point 6 of the same annex include the requirement that workstation computers have a sound processor and audio/speakers.

14. Furthermore, in Annex H of the Grounds, it is stated that «[when a recording, made in accordance with this law, records the commission of facts with criminal relevance, the Public Security Police will prepare a report, which will send to the Public Prosecutor's Office together with the respective authorization and the original support of the images and sounds» (emphasis added), raising doubts about whether it is intended to capture sound or even, despite what was stated in the request, still record sound.

15. The CNPD emphasizes that, if there is an intention to capture or record sound, no information elements were made available to the CNPD that would allow an assessment of the risk to privacy (in particular, with the use of data analysis technology), which is why why it cannot be authorized without the competent opinion of the CNPD on compliance with the limit set in paragraph 6 of article 4 of Law no. 95/2021, pursuant to paragraph.

3 of article 5 of the same legal diploma.

16. Considering now the capture and recording of images, in Annex B of the Grounds are presented exemplary images with the probable viewing angles of the cameras to be installed in each location, as well as the buildings over which the application

of privacy masks is foreseen , clarifying in point 6.g. of the same annex, that "[to guarantee the freedom and privacy of adjacent housing blocks, video surveillance cameras must support the creation of privacy masks in order to omit the image of private areas (doors, windows, balconies, terraces of buildings housing, backyards, etc.). This omission must be carried out at the level of the chamber itself so that the protected areas are never transmitted». And in Annex C (point 1.) it is specified that privacy protection is ensured through the logical definition of masks.

17. Simply, in accordance with the provisions of Article 4(5) of Law No. 95/2021, "private zones" correspond not only to residential buildings, but also to hotels or similar establishments. of specification, in the elements provided, of the purpose for using the buildings captured in the images, the CNPD recommends that the placement of masks also be ensured in any hotel or similar establishments, under penalty of violation of paragraph 5 of article 4 of the Law No. 95/2021.

18. In any case, taking into account the various cameras placed in areas adjacent to school establishments and considering that, in some cases, images of the outdoor space located within the

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perimeter of schools, the CNPD understands that such spaces deserve a reserve similar to that guaranteed to housing and hotels and similar establishments, therefore recommending that privacy masks be applied there as well.

19. In effect, capturing and recording images of students (children and young people) who are there during class breaks every day, throughout an entire school year, implies a risk of recording and analyzing behavior and habits of people vulnerable (a risk aggravated by the intended data analysis) and, therefore, profiling them, a risk that has to be mitigated. Even in view of the limitation set out in Article 19(3) of Law No. 58/2019, of August 8 ("[in] educational establishments, chambers may only focus on the external perimeters and places of access [...]», which reveals the weighting already carried out by the national legislator, even within the scope of different video surveillance systems, regarding the protection of the privacy of students within the perimeter of schools.

20. In addition, it is stated in Annex C that privacy masks are configured in terms that guarantee that operators cannot remove

them, with the CNPD recommending that effective measures be adopted to guarantee privacy, either at the time of their definition (at the installer), or the type of credential required for its deactivation.

21. With regard to capturing images, attention is drawn to the specification, in Annex C of the Justification (point 1.a.), that the cameras will have «[viewing range of at least 15 Km and a range of 360o», which is believed to be the result of an error, with the intention of eventually setting a 1.5 km viewing range, under penalty of evident disproportionality in the processing of data.

iii. The use of artificial intelligence for real-time analysis of personal data - "data analytics"

22. It is also intended, according to the Grounds that accompany the request, the analysis of images using Artificial Intelligence technology, with Annex G as title or alleged content the «Description of the criteria used in the analytical management system of collected data".

23. However, what is described in Annex G of the Grounds does not correspond to criteria for analyzing personal data, but rather to the mere description of the functions of the software to be used.

24. As a matter of fact, in Annex G it is explicitly stated that «[the definition of criteria or analysis standards to be used in video analytics is the sole responsibility of the person responsible for the treatment and conservation of data, and it is not possible for system operators to change the patterns createdy>.

25. Now, precisely what is required here, in accordance with the provisions of subparagraph g) of paragraph 1 of article 6 of Law no. 95/2021, is that the controller - who, for the purpose of article 17 of this law and also of paragraph i) of paragraph 1 and paragraph 3 of article 3 of Law no. 59/2019, of August 8, is the PSP -, in the context of this authorization procedure presents the analysis criteria. 0 which the request for authorization in question clearly does not contain.

26. Only the purposes of using the analytical data management system are foreseen, specifying that they serve the purposes of protecting people, animals and goods, in public places or with public access, and preventing the practice of facts qualified by law as crimes , in places where there is a reasonable risk of its occurrence. And it adds as a «Limit to the video analytical management system» that «[neither the video surveillance system, nor the video analytics system, allow the capture and processing of biometric data as determined in paragraph 2 of art. 16, of Law 95/2021 of December 29» and that «[the]

technical analysis criteria cannot define a profile that leads to discrimination against natural persons based on special categories of personal data, in violation of article 6. ° of Law No. 59/2019, of August 8» (cf. Annex G of the Grounds, p. 165). It is stated in the AIPD that the system does not allow the capture and processing of biometric data.

27. It should be remembered that the CNPD must rule on compliance with Article 16 of Law No. 95/2021, pursuant to Article 5(3) of the same law.

28. Now, the analytical criteria of the captured data - which the national legislator called "technical" - are significantly relevant in assessing the proportionality of this specific operation of processing personal data, as they are likely to impact on the rights, freedoms and guarantees of citizens. Therefore, they should be subject to a specific consideration of their adequacy and necessity in view of the purposes specifically aimed at with their use, by the person who defines them (the controller), as well as by the body that, in the context of a procedure authority, exercises the power to authorize the treatment and by the body with explicit advisory power in this matter (the CNPD).

29. With the CNPD issuing an opinion on the concrete application of the technology provided for in article 16 of Law no. the Government member with authorizing competence can assess the proportionality of the processing of personal data resulting from the use of the video surveillance system and, therefore, also from this specific processing operation, in accordance with the provisions of paragraphs 1 to 3 of article 4 . of Law No. 95/2021, it would be, for this purpose, essential to identify and explain (reasoning) the criteria that will guide the application of the functionalities described in Annex G. Which does not happen.

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30. There is still no information regarding data processing: where it takes place (if in each of the chambers, or in the

server/software), who manages the processing, what measures are foreseen to prevent the alteration of the criteria, etc.

31. On the other hand, it is not accurate to say that the system guarantees that there is no processing of biometric data -as referred to in Annex G and in the AIPD -, because the concept of biometric data is broad, not limited to those that identify unequivocally a person (including biometric data that help or contribute to the identification of a person - soft recognition), but above all taking into account that, in the same annex G, on p. 162, the system is required to include analysis algorithms, namely [...] facial recognition, search by individual's appearance in offline mode, among others».

32. In other words, the safeguards made at the end of Annex G, of a merely declarative or intentional nature, are manifestly insufficient to ensure that the data analysis operation does not imply discrimination based on constitutionally and legally prohibited factors, with nothing in the description of the management system that demonstrates that such risk is removed.

33. In short, it is indispensable to present the criteria for analyzing the data, under penalty of not being able to assess whether this treatment respects the different limits and conditions provided for in the law and in the Constitution of the Portuguese Republic. And it is also essential that the source code, which will be used in this system, be auditable, under penalty of emptying the function and inspection powers legally attributed to the CNPD.

34. Thus, given the omission, in the request, in the Grounds and in the AIPD, of identifying the criteria underlying the use of the data analytics management system, the CNPD is unable to verify whether the legal and constitutional conditions and limits to which this use, nor does the body with authorizing competence have sufficient elements to assess its proportionality.

35. The CNPD recommends, for all these reasons, that this use is not, for the time being, subject to authorization, under penalty of its invalidity due to omission of the consultation imposed by no. 3 of article 5 of Law no. 95 /2021.

iv. Video surveillance system security

36. From the perspective of the security of the video surveillance system, we highlight here the aspects that are not taken care of and reinforcing measures are recommended to integrate some shortcomings of the system.

37. Starting with the physical security of the system, there is no description of the topology of the video surveillance system network, of any segregation in relation to other communications and how the interconnection is made to the server housed in the Command and Operational Control Center compartment.

38. In this regard, it begins by noting that the statement contained in Annex G, page 162, regarding the analytical data management system, when it is established as a requirement that «the platform must allow integration with other information systems to specific or specific needs", raises the greatest reservations, also due to its open and imprecise character, which hinders the understanding of its real scope and impact.

39. Still with regard to the physical security of the system, nothing is said about the physical installation of the cameras or where the communication cabinets will be located. The CNPD therefore limits itself to recommending that the solution to be adopted include intrusion alarms also in the communication cabinets where the cameras will be connected, it being essential that they are not located on the floor or at a height that makes them easily accessible. and that, preferably, all cables are underground.

40. Regarding the availability of captured images, although redundancy and high availability mechanisms are mentioned in Annex G of the Justification, these are associated with the data analytics management system, not being specified in Annex C as technical requirements of the system of video surveillance.

41. The only requirement made on the availability of image capture is in point 3 of Annex C; Simply put, the potentially removable local storage in the chambers represents a security risk that should have been considered in the impact analysis and accompanied by mitigating measures.

42. Moreover, data availability is not guaranteed in the event of storage failures, nor is there provision for recovery of data in the event of accidental deletion. It is therefore recommended to plan a backup system that ensures data availability within the defined time window, which is 30 days.

43. As for the communications architecture, it is stated in Annex C (point 4.f.) that all transmissions are encrypted, with the encryption key having to be changed every six months. It is safeguarded that not all encryption solutions available guarantee security, and updated or higher versions should be considered.

44. It is also indicated in annex C (point 4.d.) that image transmission is carried out over the IP protocol. In the cameras to be installed, all supported protocols that are not essential for the functioning of the system must be disabled, to reduce security risks.

45. It is also important to point out another measure that represents the best practice for video surveillance networks, so as not

to offer a surface for malicious external attacks on internal networks: their physical segregation from the

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other networks. This measure is only listed in Annex G, concerning the management of the data analysis system, when it should have been specified in Annex C as a requirement of the video surveillance system.

46. Furthermore, in Annex J it is indicated that «[the] entity responsible for maintaining the system will be the Municipality of Sintra, which shall cover all maintenance, repair and upkeep costs for the equipment». In the absence of clarification that the network of video surveillance cameras and the recording server is physically dedicated and segregated from other municipal network assets and that the management of this network by the Municipality is governed by specific security policies, it appears that the scenario network sharing and the possibility of interconnection on which the authorization request appears to be based represents a high risk to data security, as it makes the system permeable to third-party access attempts.

47. Thus, the CNPD recommends the segregation of the video surveillance circuit network.

48. Still regarding security measures, two notes are left: the first, to recommend that the authentication mechanisms - access to the viewing room and access to the system - be personal and non-transferable (e.g., the two factors authentication must be unique for each PSP agent); the second, to emphasize that image extraction must be a privileged access functionality, therefore, not recognized by all operators with permission to view the images. And there must be a record of the chambers and time interval in the extraction, as well as the person responsible for carrying it out.

49. Also with regard to image extraction, Annex H of the Grounds does not explain the image extraction process, specifically, how these recordings are preserved to be exempted from the 30-day rotation of the system file. Within the scope of image collection, the solution must consider that the video surveillance system management software has mechanisms that enable

export in digital format, digitally signed, attesting to the veracity of its content. The existence of encryption mechanisms should also be foreseen, in case the intention is to protect the export with an access password or another security factor. Some of these requirements are indicated in Annex G, regarding the data analytics management system, but, strictly speaking, these are requirements to be fulfilled regardless of the use of such management system.

50. One last note, regarding synchronization with legal time, provided for in point 7. of Annex F, to specify that it is recommended that the service consulted to synchronize the clocks be accessible to the recording server and that this act as a synchronization service for the chambers.

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v. Auditability of the processing of personal data

51. In Annex F (point 13.), the recording of interventions in the system is foreseen in order to enable an audit. However, surely by mistake, there is a reference to annex B (identification of the installation points of the cameras) and in annex C, concerning the general technical characteristics, there is nothing about this requirement. In any case, it is essential to define the retention time for records of interventions and operations in the video surveillance system.

52. Thus, the CNPD recommends the provision of a record retention policy for audit purposes, setting the period of time until their disposal, as well as the provision of key indicators for audit reports in terms of monitoring the security in accesses and operations carried out

53. It is also important to reinforce the importance of the support and maintenance services for the video surveillance system being physically provided on site, under direct supervision and monitoring by the PSP, as responsible for the processing of personal data, remote access being not admissible insofar as so do risks of compromised security.

saw. subcontracting

54. Regarding the installation and maintenance of the video surveillance system, because it is directly related to the security of the data being processed and the ability of the system to fulfill the intended purposes, it is emphasized that this obligation falls on the person responsible for the data processing data, regardless of who owns the video cameras and other equipment that

make up the system.

55. The CNPD emphasizes, in this regard, that corresponding, under the terms of the law, the person responsible for the processing of data by force or requesting security service [...] with jurisdiction in the catchment area, eventual subcontracting in a company to ensure the maintenance or replacement of equipment must be contractually formalized with PSP. The possibility of the PSP subcontracting the Municipality of Sintra is not ruled out, which may sub-subcontract companies, under the terms regulated in article 23 of Law no. 59/2019, of 8 August. What cannot be is a reversal of roles, leaving the PSP without the domain or control of the processing of personal data that the video surveillance system performs.

56. It is therefore important that a contract or agreement be entered into that specifically regulates this subcontracting relationship, binding the Municipality under the terms of that legal rule, an agreement that is presumed not to exist, since it was not attached to the order or to it if reference.

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57. Specifically with regard to sub-subcontracting, it should be remembered that, under the terms of the same Article 23, they depend on the prior authorization of the person in charge.

III. Conclusion

58. Since it is not within its legally assigned competence to pronounce on the concrete foundations of the installation and operation of the video surveillance system in the Municipality of Sintra, the CNPD, with the arguments set out above and under the competence conferred by Law no. 95/2021:

The. Draws attention to the indispensability of clarifying the number of cameras to be installed in view of the inconsistency detected between the request and the accompanying documentation;

B. Points out that blinding masks to guarantee privacy must be applied to all windows and doors of buildings intended for

housing and hotel activities or similar, as well as on the internal perimeters of school establishments, and must be configured as indicated above, in point 20;

w. It also recommends the adoption of measures capable of guaranteeing the security of the system and the auditability of the processing of personal data, under the terms mentioned above, in points 37 to 53;

d. It recalls the indispensability of expressly and clearly delimiting in a contract or agreement the intervention of the Municipality of Sintra as a subcontractor regarding the processing of personal data arising from the use of the system, as well as any sub-subcontractors.

59. In particular, the CNPD recommends not authorizing the use of the data analytics management system, in view of the ostensible absence (in the request and in the elements that instruct it, maximum in the impact assessment on data protection) of definition of the respective criteria, due to the impossibility of verifying compliance with the legal and constitutional conditions and limits to its use, in particular, of assessing the proportionality of such use.

Lisbon, November 18, 2022

Fmpa uaivao (Chairman, who reported)