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CNPD

National Data Protection Commission

OPINION/2021/19

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 aimed at regulating access by the Seia City Council (CMS) to car registration, for the purpose of monitoring compliance with the Highway Code and supplementary legislation on public roads under its jurisdiction.
2. The request is made under paragraph 7 of article 27-E of Decree-Law n.º 54/75, of 12 February, which regulates car registration.
3. The IRN, the Institute for Financial Management and Justice Equipment, I.P. are parties to the protocol. (IGFEJ), the General Secretariat of the Ministry of Internal Administration (SGMAI), the National Road Safety Authority (ANSR) and the Municipality of Seia.
4. Under the terms of Clause 1,a of the protocol, the CMS «is authorized to access the vehicle registration information by consulting the respective database online», located in the IGFEJ, for the «exclusive purpose of pursuing the competence that is legally committed to monitoring compliance with the provisions of the Highway Code and complementary legislation».
5. The following data are accessed: «name, habitual residence, identification document number and date and tax identification number, when technically available, or company name, registered office and number of legal person, owner, lessee or usufructuary, at the cost or charges” (No. 1 of Clause 1, a).
6. Access is made in real time, through the Traffic Offenses System - SCoT2, under the responsibility of ANSR, through webservice communication between the technological infrastructures of the Ministry of Justice and the Ministry of Internal Administration, supported respectively by the IGFEJ and the
7. For this purpose, the IGFEJ will assign an access accreditation to the ANSR, as the SCoT manager, and which, to that extent, manages the individual users of the system, assigning them the SCoT access accreditations.
8. Therefore, for audit and security purposes, ANSR, through SGMAI, undertakes to send IGFEJ, in each transaction, the

identification of the user who wants to access the information, the

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

2 This system, in order to dematerialize management of administrative offense records, allows the processing and remote access to information from mobile devices.

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corresponding process or notice, in addition to other audit data, as established by the IRN and the IGFEJ. Searches can only be done by vehicle registration. Records (logs) of the accesses made are also kept, which are kept for a period of two years for audit purposes (cf. Clause 2.a).

9. Under the terms of Clause 3.a of the protocol, the CMS must comply with the legal provisions contained in the RGPD and Law No. 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 foreseen that if the CMS 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 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 it.

11. Also under the terms of the protocol, CMS and ANSR undertake to control the access of information users, through individual access accreditation, and both entities and SGMAI must establish internal rules regarding data security and

confidentiality ceded. As the entity authorized to access the vehicle registration database, CMS is solely responsible for accessing the information and its subsequent use (cf. Clause 5.a).

I. Appreciation

12. Pursuant to subparagraph d) of paragraph 2 of article 27-D of Decree-Law n° 54/75, personal data from the car registration may be communicated, in order to carry out the respective attributions, the entities responsible for monitoring compliance with the provisions of the Highway Code and complementary legislation.

13. Also in accordance with paragraphs 2 and 3 of article 27-E of the same diploma, these entities may authorize the consultation of data transmission online, provided that security guarantees and subject to the conclusion of a protocol that defines the limits and conditions of access.

14. The possibility for CMS to access the car registration derives from the combined provisions of Article 5(1)(d) and No.3(a) of Decree-Law No. 44/ 2005, of February 23.

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15. To that extent, it is considered that there is a basis of legitimacy for this data processing, in the form of access, under article 6, point ej, of Regulation (EU) 2016/679, of 27 April 2016 -General Regulation on Data Protection (GDPR).

16. As for the conditions of legitimacy for carrying out the access through the SCoT and for the intervention of the ANSR, these are considered to be met, insofar as, as provided for in paragraph 1 of article 2 of Regulatory Decree no. 28/2012, of 12 March, the ANSR's mission is to "enforce the road traffic administrative law". It is also responsible, under the terms of subparagraph e) of paragraph 2 of the aforementioned diploma, "to ensure the processing and management of records raised for violations of the Highway Code and complementary legislation". To this end, it owns, coordinates, manages and finances the SCoT, in accordance with the provisions of Joint Order No. 19081/2008, of 17 July.

17. Also within the framework of the transfer of powers to local authorities, approved by Law no. 50/2018, of 16 August, Decree-Law no. powers for municipal bodies in the field of public parking, providing in its article 4(1)(a) that the SCoT is used 'for the collection of administrative offences'.

18. Given that the IGFEJ only provides accreditation for a generic user (the ANSR) and not for individual users, who are

managed directly by the ANSR, it is considered an adequate safeguard measure, by the IRN, to require that the identification of the user is provided, as well as the information regarding the case number or notice that triggers the search, as it allows him, on the one hand, to know the individual user for audit purposes and, on the other hand, to prevent the realization of unjustified access, exercising better access control.

19. It should be noted that, under the terms of paragraph 4 of article 27-H of the decree-law that regulates the car registration, the entities that can consult the car registration, in this case the CMS, 'are obliged to maintain an up-to-date list of persons authorized to access the databases'. Although this is a legal obligation that derives expressly from the text of the law, the CNPD understands that its transposition into Clause 5.a of the protocol, in addition to paragraphs 1 and 2, may have an effect that enhances compliance.

20. As regards the security measures envisaged for the transmission of data, as well as the obligation provided for in paragraph 3 of Clause 5.a, they appear generally to be appropriate.

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

Likewise, the participation of SGMAI is based on the attributions conferred on it by the

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subparagraphs a) and d) of paragraph 9 of article 2 of Regulatory Decree no. 29/2012, of 13 March, as amended by Decree-Law no. 112/2014, of 11 March July.

II. Conclusion

22. The CNPD considers that there is legitimacy for the access by the Municipality of Seia to the personal data of the car

registration, within the limits and conditions recommended by the present protocol, therefore, it understands that there is no impediment to its execution.

Approved at the February 9, 2021 meeting

Filipa Calvão (President)