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DATA PROTECTION

OPINION/2020/145

## I. ORDER

On 22 September 2020, by order of the Assistant Secretary of State and Internal Administration, an opinion was requested from the National Data Protection Commission (CNPd) on the request for authorization to install a video surveillance system in the city of Lisbon, submitted by the Public Security Police (PSP).

The CNPD assesses the request under the terms and for the purposes of Law No. 1/2005, of 10 January, amended and republished by Law No. 9/2012, of 23 February, which regulates the use of surveillance systems by video cameras by the security forces and services in public places of common use, for capturing and recording image and sound and their subsequent processing.

The request is accompanied by a document containing the reasons for the request and the technical information of the system, hereinafter referred to as “Rationale”.

Considering that the processing of data produced by this system can result in a high risk for the rights and freedoms of individuals and because it implies a systematic control on a large scale, an impact assessment on data protection (AIPD) was carried out for the processing of data in question, sent to the CNPD together with the authorization request and its annexes, in accordance with the provisions of article 29 of Law no. personal data for the purpose of preventing, detecting, investigating or prosecuting criminal offenses or enforcing criminal sanctions, transposing Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016.

It is on the basis of the information contained in that AIPD, as well as the reasoning accompanying the request, that the CNPD issues this opinion.

## II. ASSESSMENT

1. Object of the opinion to be issued under the terms of article 3 of Law No. 1/2005, of 10 January

Pursuant to Article 3(2) of Law No. 1/2005, of January 10, as amended by Law No. 9/2012, of February 23 (hereinafter, Law

No. 1 /2005), the opinion of the CNPD

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is restricted to the pronouncement on the compliance of the request with the rules regarding the security of the treatment of the collected data, as well as on the special security measures to be implemented adequate to guarantee the entrance controls in the premises, of the data carriers, of the insertion, of use, access, transmission, introduction and transport and, as well as verification of compliance with the duty of information and before whom the rights of access and rectification can be exercised.

In accordance with the provisions of the same legal precept and in paragraphs 4, 6 and 7 of article 7 of that law, the CNPD's opinion is also subject to respect for the prohibition of installing fixed cameras in areas that, despite located in public places, whether, by their nature, intended to be used in guarding or the use of video cameras when the capture of images and sounds covers the interior of an inhabited house or building or its dependence, or when this capture affects, in a way, directly and immediately, the privacy of people, or results in the recording of conversations of a private nature.

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

Pursuant to paragraph 7 of article 3 of the same law, the CNPD may also formulate recommendations with a view to ensuring the purposes set out in the law, subjecting the issuance of a totally positive opinion to the verification of completeness of compliance with its recommendations.

2. Video surveillance in public places of common use in the city of Lisbon for the purpose of protecting people and property and preventing crimes

It is intended to install 216 video surveillance cameras, divided into 16 areas of the municipality of Lisbon. It is stated that the system will only record images, emphasizing that the sound recording capacity will not be used.

2.1. The impact on privacy within housing buildings

Although, under the terms of the legal competences defined in Law no. 1/2005, it is not up to the CNPD to pronounce on the proportionality of the use of

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video surveillance in public places of common use for the purpose of protecting people and property, this competence already exists when the cameras are installed in areas that are, by their nature, intended to be used as a guard or to capture images or sound. interior of an inhabited house or building or its dependence, or directly and immediately affects people's privacy, or results in the recording of conversations of a private nature (cf. paragraphs 4, 6 and 7 of article 7 of the Law No. 1/2005).

However, the installation of a video surveillance system in the city of Lisbon implies the processing of personal data which, due to its scope and extent, is likely to significantly affect the private life of people who circulate or are in that city. It is important, therefore, to stop at this point.

In Annex A of the Rationale, the areas of the city of Lisbon that are subject to surveillance are described and the capture of the viewing area of each camera is presented. In these images, areas delimited with blue ellipses are shown that seem to correspond to areas with windows or building entrances and which, presumably, as it is not mentioned, are the digital recording block areas. Indeed, it is stated in Annex B, concerning the general technical characteristics of video surveillance equipment, that "the software of these same cameras will allow the unlimited placement of individually configurable 3D masks to hide the defined areas of the images", and that the masks will be dynamically adjusted to hold even when zooming is applied. If applied before the video stream, they will also appear in recorded files.

Also in Annex B, three different types of cameras are identified, namely: 4K fixed camera (8MP), 6K fixed camera (24MP) and PTZ FULL HD camera (2MP).

Although, based on the documentation presented, it is not possible to identify the types of cameras - among the three listed (with different capacities) - that will be installed in each location, and therefore it is difficult to assess the real impact on privacy, the application of masks mitigates the impact on privacy in access and inside buildings, as long as the system does not allow their deactivation, editing or deletion by system users.

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Also regarding the impact on privacy, considering the statement that the sound recording capacity will not be used, it is important to ensure that the system does not allow the use of this capacity.

## 2.2. The technical characteristics of the system

Considering now the technical characteristics of the video surveillance system, it is important to verify that the different legal and regulatory requirements applicable are met. It is recalled that such requirements refer to the security of the collection, transmission and conservation of images, in order to guarantee the confidentiality, authenticity and integrity of the recorded images, as well as the auditability of the system.

Before starting to analyze the technical characteristics of the system, it is important to note that the application for authorization to install the video surveillance system does not accurately describe the characteristics of the systems on which the treatment will be carried out, but rather the technical characteristics that the PSP determined that they would be chargeable for such equipment. The two concepts differ, as the first characterizes the way in which a technology was implemented, while the second can comprise multiple different technologies and also multiple different implementation scenarios. It is, therefore, the difference between what "is" and what "can be" that makes it difficult for the CNPD to assess the system's compliance with the conditions and limits set out in paragraph 2 of article 3 of Law no. 1/2015 and Ordinance No. 372/2012, of November 16. Furthermore, there are aspects of the data processing carried out by or based on the video surveillance system that are indicated in the description of the technical characteristics, but in relation to which there is no information that allows understanding their contours and their foundations.

Entering now into an analysis focused on the technical characteristics of the system, it is worth highlighting the following aspects of the processing of personal data.

The. As stated in Annex B of the Grounds, regarding the technical characteristics of the equipment, the system allows you to "disable zoom" by certain users, or levels of users.

It is recommended that you ensure the specific record (iog) of the zoom activation, so that you can audit the use of this feature and its need.

B. Annex B of the Rationale refers to the need for the system to have “high flexibility and connectivity, allowing the system to grow and integrate with other electronic property security systems. Given that no interconnections are described for the processing of data in question, it is not understood which are the possible “electronic systems of asset security” with which the possibility of integrating is proposed.

It is therefore essential to specify any data interconnections that the controller intends to implement, so that the CNPD can issue the appropriate ruling.

ç. In Annex B, it is required that the system has «double authentication, one deiaspor” QR Code V In this regard, it should be noted that it is not clear what application is intended to give the QR Code in this context, since a single QR Code is generated for each authentication, similar to what some applications do to validate access.

To this extent, it is not possible to assess whether this mechanism provides greater or lesser security until it is better implemented.

d. Still regarding the specifications of the video cameras, the requirement that they be equipped with SD (Secure Digital) memory cards to record video “inside” is mentioned. Although this requirement is not justified, it is assumed that it is intended to guarantee a constant flow of data in case of occasional loss of connection with the server.

Given that the conservation of images on local SD cards increases the risk of improper access, it is recommended that the controller ensures that the information stored on the SD card is restricted to the last seconds of video capture, in order to reduce the risk in case of improper access or theft of the camera.

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and. Neither in the Grounds nor in the AIPD is there any reference to the existence of a server or storage that allows for the backup of both recordings and system / ogs and access logs, to make it possible to recover such data in case of failure of the main server .

It is recommended to implement a redundancy mechanism that can guarantee the continuity of recording and system operation in any unforeseen situation.

f. Although the IAPD mentions that there will be "control of data carriers", it is not clear whether this control will also be carried out at the entrance to the room where the main server and monitoring screens are located, not allowing operators and other people to access it carry external supports, or if there are mechanisms that guarantee that the monitoring posts are used exclusively for viewing images.

Therefore, it is recommended that the machines have safeguards to prevent the copying of images and storage on external media, in order to comply with the provisions of article 9 of Law No. 1/2005.

### 2.3. The rights of information, access and deletion of data

With regard to the rights of access and deletion of data, it is stated, in Annex C of the Justification, that they will be guaranteed in accordance with the provisions of paragraph 1 of article 10 of Law no. 1/2015; regarding the right to information, it declares that it complies with the provisions of Ordinance No. 373/2012, of 16 November.

However, attention is drawn to the fact that the rights of data subjects are today defined in Law no. detection, investigation or prosecution of criminal offenses or enforcement of criminal sanctions, transposing Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016.

This is specifically aimed at the data subjects' right to information, which is more densified in article 14 of Law no. 1/2005 provided.

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While the national legislator does not update the special regimes, in order to ensure their compliance with the provisions of Directive (EU) 2016/680, which Law no. 4 of Law no. 1/2005 must be interpreted and applied in such a way as to comply with the requirements of the new personal data protection regime.

It is therefore not sufficient to declare that the warning and symbology models to be used comply with the provisions of

Ordinance no. Law No. 59/2019, through the provision of other information on the installation of the video surveillance system in digital media for the dissemination of PSP information, in particular, taking into account that it is intended to associate video analytics technologies in the analysis of the information that the system collects.

#### 2.4. Other aspects of the processing of personal data arising from the use of the system

##### 2.4.1. The data controller and data protection officer

Throughout the request (in the accompanying Justification) there are several references to the intervention of the data protection officer in the processing of personal data resulting from the use of the video surveillance system, in terms that give rise to the greatest reservations as to respect for Articles 34. , No. 1, and 35 of Law No. 59/2019, of August 8.

In fact, it is not only stated in the text of the authorization request that “All programming and operation changes will be carried out by the data protection officer.” (cf. point g) of the aforementioned request), as in Annex B of the Justification, the system is required to “put any camera on stand by with the appropriate credentials of the data controller (Data Protection Officer)- ». The AIPD also mentions that “the extraction of recordings from video images will depend on prior authorization by the person responsible for data protection”. Finally, and even stranger, in Annex C, the PSP data protection officer is also indicated as the data controller.

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It is important to bear in mind that to the functions of the Data Protection Officer, which are exemplified in article 35 of Law no. mission to "assist [the controller] in monitoring compliance with obligations", pursuant to paragraph 1 of article 34 of the same law, so that in no case may they imply a sharing of responsibility for the processing of data and nor a transfer or sharing of responsibility for the fulfillment of the different legal obligations that fall on the controller. The data protection officer performs an essentially advisory and auditing role, and therefore cannot make decisions about the treatment, as in this way the responsibility for such decisions would fall on him - in clear contradiction with the provisions of articles 20. ° and following of Law No. 59/2019, of August 8.

Thus, not departing from the solution, regarding a series of specific operations of data processing within the scope of the

present video surveillance system, if the intervention of the data protection officer is foreseen, the CNPD believes that it is essential that it does not assume a decision-making or authorizing, but rather advisory in nature (therefore, the need for an opinion from the person in charge is foreseen, instead of attributing to him the power to authorize these operations).

#### 2.4.2. Subcontracting relationship

As for the subcontracting relationship, the documentation provided only clarifies that the Lisbon City Council (CML) «is responsible for maintaining the system, which must ensure all costs of maintenance, repair and conservation of the equipment» - cf. Annex I to the Statement of Grounds.

In this regard, it is important to emphasize that the subcontracting relationship, with regard to the processing of personal data, is established between the PSP (responsible for the treatment) and the third party that may be subcontracted, regardless of the public entity that finances the equipment purchase. Thus, it is up to the PSP to determine, not only the characteristics of the equipment that make up the video surveillance system to be acquired, but also the sufficient guarantees for the execution of technical and organizational measures adequate to pursue the purpose of the treatment that must be presented by a subcontractor in the management of

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maintenance, repair and conservation of the means through which the treatment is carried out. This is what results from paragraph 1 of article 23 of Law no. 59/2019, of 8 August.

Although the procedure for awarding the subcontracting contract, as well as the costs of executing the subcontracting contract, are borne by CML, it is important to ensure that the PSP also appears in the subcontracting contract as a party and that, under the terms of the respective clause, it is guaranteed that the PSP autonomously controls the system, as it is responsible for it under the law, with the subcontractor being linked to the PSP.

If the maintenance, updating, repair and conservation services of the means, through which the treatment is carried out, are the object of the equipment acquisition contract, it is essential that the specifications and, consequently, the contract foresee the role of the PSP as responsible for the treatment and, to that extent, the contractor's duty to provide the service and report,



as a subcontractor, directly and exclusively to PSP.

## 2.5. The use of video analytics technology

Although nothing is mentioned in the AIPD regarding the use of Artificial Intelligence technology or video analytics, the truth is that in Annex B of the Rationale there is an explicit reference, in the three types of cameras, to the requirement of «ability to measure how many pixels are in a given scene to better qualify the space or area video analytics; [display in the operator's video matrix the programmed sequences of video events according to priority and according to the types of rules violated]». However, these characteristics of the equipment reveal that the video surveillance system implies the use of advanced image analytics technology, without anyone realizing what the priority criteria are or the types of rules violated.

Strictly speaking, the characteristics described above indicate the identification of patterns and a video analysis with confrontation with detection algorithms. However, the Groundwork does not describe the algorithms involved in the comparison, nor are the criteria specified, nor who is responsible for defining these criteria.

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Considering that there is a set of personal data that are subject to a specially reinforced protection regime - those provided for in paragraph 1 of article 6 of Law no. 59/2019, of 8 August - and that n. 2 of the same article prohibits the creation of profiles that lead to the discrimination of natural persons based on these data, the CNPD understands that, under the terms of the procedure, it is not possible to evaluate and conclude on the adequacy, need and respect for the prohibition of excess regarding the use of the video surveillance system with these attributes.

It is therefore essential that the use of this type of technology be, at the very least, preceded by a set of precise rules for its users, in order to limit the risk of discrimination and infringement of Article 6. of the aforementioned law, which, in the absence of a normative diploma, must be included in the authorizing administrative act.

## III. CONCLUSION

1. As it is not within the competence that is legally attributed to it to pronounce on the concrete grounds for installing a video surveillance system in the city of Lisbon, the CNPD, with the arguments set out above, recommends the following:

The. In order for the impact on privacy to access and within buildings to be considered sufficiently mitigated, as required by article 7 of Law No. 1/2005, the system must guarantee that it is not possible to disable, edit elimination of masks by system users, nor the use of sound recording capacity;

B. That the observations set out above, in point 2.2., be followed;

ç. In compliance with the provisions of article 14 of Law No. 59/2019, of 8 August, that the information provided for in Ordinance No. 373/2012, of 16 November, be complemented with other information on the installation of video surveillance system in digital media for the dissemination of PSP information;

d. Under penalty of violating the provisions of paragraph 1 of article 34 of Law no. intervention of

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data protection officer in certain data processing operations cannot assume a decision-making or authorizing nature, but rather an advisory nature;

and. As the contracting of services for maintenance, updating, repair and conservation of the means through which the treatment is carried out corresponds to a subcontracting regulated in article 23 of Law no. as responsible for the treatment, that the contracted company is linked and to whom it provides the service, so whether such services are included in the equipment acquisition contract or in an autonomous contract, it is essential that the specifications and, consequently, the contract provide for the role of PSP as data controller and, to that extent, the service provider's duty to provide and report, as a subcontractor, directly and exclusively to PSP.

2. The reference to the use of video analytics technology, as described in Annex B of the Rationale, is not accompanied by the definition of criteria or standards of analysis, nor limits to their definition, nor the identification of who will define, therefore, taking into account the impact on privacy and the risk of discrimination arising from its use, the CNPD believes that it is not possible to assess and guarantee the proportionality of the processing of personal data resulting from the use of this video surveillance system with these attributes; therefore draws attention to the need for the use of this type of technology to be, at the very least, preceded by a set of precise rules for its users, in order to limit the risk of discrimination and infringement of

Article 6 of the said law, which, in the absence of a normative diploma, must be included in the authorizing administrative act.

Approved at the December 16, 2020 meeting

Filipa Calvão (President)

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