

National Data Protection Commission

OPINION/2021/109

I. Order

1. 0 Instituto dos Registos e do Notariado, I.P. (IRN) has submitted to the National Data Protection Commission (CNPd) a draft protocol that aims to regulate the access of the Municipal Company Nazaré Qualifica, E.M., Unipessoal, Lda. to vehicle registration, for the purpose of monitoring compliance with the Highway Code and complementary legislation on public roads under the jurisdiction of the respective municipality.

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

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 municipal company Nazaré Qualifica, E.M, Unipessoal, Lda (hereinafter, «Nazaré Qualifica»),

4. Under the terms of Clause 1a of the protocol, Nazaré Qualifica «is authorized to access 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 it within the scope of monitoring compliance with the provisions of the Highway Code and complementary legislation, and while the delegation of powers of the Municipality of Nazaré is in force».

5. The following data are accessed: «name, habitual residence, number and date of the identification document and tax identification number, when available, or firm, registered office and number of legal person, owner or lessee or usufructuary and the encumbrances and charges". (No. 1 of Clause 1a).

6. Access is made in real time, through the Traffic Offenses System - SCoT, 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 SGMAI.

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7. The searches are carried out by vehicle registration, being mandatory the insertion of the process number or the news report. For audit purposes, ANSR sends the user identification, the process number associated with the search and other established audit data to the IGFEJ in each transaction.

8. Accesses are recorded (logs) for a period of two years, in accordance with the provisions of paragraph 4 of Clause 2a of the protocol.

9. Under the terms of Clause 3.3 of the protocol, Nazaré Qualifica must comply with the legal provisions contained in the RGPD, namely with regard to respecting the purpose for which the consultation was authorized, which must be limited to what is strictly necessary, not using the information for other purposes. ends; 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 Nazaré Qualifica uses the subcontractor to execute 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 it.

11. Clause 4.a establishes the two possible modalities of access to the car registration, with the implementation of IPSEC tunnels being mandatory.

12. Also according to Clause 5.3 of the protocol, Nazaré Qualifica and ANSR undertake to control users' access to the car registration, and "access to the system must be carried out through an individual user code and password personal", which makes each user responsible for the use made of the service.

13. The municipal company, together with ANSR and SGMAI, must develop internal rules regarding the security and confidentiality of the data provided. In any case, the municipal company Nazaré Qualifica is responsible for accessing the information and for the use made of it, pursuant to paragraphs 4 and 5 of Clause 5a.

14. Failure to comply with the provisions of Clause 3.3 on the processing of personal data, as well as the revocation of the delegation of powers of the Municipality of Nazaré in the municipal company Party to this protocol, is reason for resolution of the protocol. •

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15. The protocol is concluded for a period of one (1) year, tacitly extendable for equal periods. The resolution of the protocol implies the immediate termination of Nazaré Qualifica's authorization to access the car registration database (cf. Clause 10.a and no. 2 of Clause 9.a).

II. Analysis

16. Pursuant to subparagraph d) of paragraph 2 of article 27-D of Decree-Law n.º 54/75, of 12 February, diploma that regulates car registration, the vehicle registration may be communicated, in order to carry out their respective attributions, to the entities responsible for supervising compliance with the provisions of the Highway Code and complementary legislation.

17. 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.

18. The possibility for Nazaré Qualifica to access the car registration derives from the combined provisions of Article 5(1)(d) with No.3(c) of Decree-Law No. 44/2005 , of February 23, in its current wording.

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

20. Regarding the conditions of legitimacy for the realization of 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. On the other hand, subparagraph a) of paragraph 1 of article 4 of Decree-Law no. 107/2018, of 29 November¹, provides that municipalities use the SCoT to collect notices of traffic violations.

¹ Diploma that implements the framework for transferring competences to municipal bodies in the field of public parking.

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21. The rule of mandatory indication of the process number that supports access as a condition for the continuation of the research and consequent access to data is highlighted as positive and essential.

22. The rule on individualized access per user, using unique credentials, and respective logs, always allowing tracking of each user's activity, is also underlined as adjusted.

23. 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 seem generally appropriate.

24. It is also positive that the non-compliance with provisions relating to data protection is a reason for the protocol to be terminated.

25. 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 powers conferred on it by subparagraphs a) and d) of paragraph 9 of article 2 of Regulatory Decree no. was given by Decree-Law No. 112/2014, of 11 July.

III. Conclusion

26. The CNPD considers that there is legitimacy for access by the municipal company Nazaré Qualifica, E.M., Unipessoal,

Lda. to the personal data of the car registration, within the limits and conditions recommended by this protocol, therefore, it understands that there is no impediment to its execution.

Lisbon, August 19, 2021