CNPD

National Data Protection Commission

OPINION/2022/48

I. Order

1.0 Centro Hospitalar Universitário de Lisboa Central, EPE (CHULC, EPE) submitted to the National Data Protection Commission (hereinafter CNPD), for an opinion, the Collaboration Protocol with the National Road Safety Authority with a view to collecting and providing data on accidents, occurring on public roads or similar, in which the drivers of cycles, motor cycles, self-balanced and self-propelled vehicles with electric motors, or other similar motorized means of movement are involved, who, as a result of the accident, have received hospital care, for the purposes of framing, analysis, treatment and statistical registration within the scope of road accidents.

2. The CNPD issues an opinion within the scope of its attributions and competences as an independent administrative authority with powers of authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57, in conjunction with subparagraph b) of paragraph 3 of article 58, and with paragraph 4 of article 36, all of Regulation (EU) 2016/679, of 27 April 2016 - General Regulation on Data Protection (hereinafter GDPR), in conjunction with the provisions of article 3, paragraph 2 of article 4, and paragraph a) of paragraph 1 of article 6, all of Law n° 58 /2019, of 8 August, which enforces the GDPR in the domestic legal order.

II. Analysis

3. Pursuant to paragraph 1 of article 9 of Decree-Law no. 203/2006, of 27 October, the National Road Safety Authority (ANSR) has the mission of planning and coordinating at the national level to support to the Government's policy in terms of road safety, as well as the application of road traffic offences.

4. In pursuit of its mission, the ANSR is responsible for contributing to the definition of policies in the field of traffic and road safety, with this entity being responsible for the elaboration and monitoring of the national road safety plan and the structuring documents related to it, as well as the regular monitoring of claims (cf. paragraphs a) and f) of no. 2 of article 9 of Decree-Law no. 203/2006, of 27 October). In this context, ANSR collects and analyzes statistical data referring to road accidents, with a

view to preparing studies in the field of road safety and proposing the adoption of measures aimed at the planning and discipline of traffic.

5. Under the terms of the preamble, there has been an increase in the use of motorized bicycles, electric scooters, as well as self-balanced and self-propelled, self-balanced and self-propelled movement devices and other similar means of movement with motor, on public roads , being in most cases

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hospital establishments are the only entities that have access to data relating to accidents involving drivers of the aforementioned vehicles, following the healthcare provided. This accident rate assumes a growing importance that it is important to analyze and account for in the studies carried out on road safety, in the analyzes related to the causes and factors present in road accidents, as well as in the accident reports produced.

6. As established in Clause 2.a of the Protocol, CHULC, EPE, through its health units, collects and records the following personal data from users who receive health care following an accident in which they have been involved: age, gender and nationality of the driver, degree of seriousness of the injuries, traumas suffered, place of accident, vehicle involved (assuming that the vehicle category is here intended) and nature of the accident.

7. According to paragraph 2 of Clause 2.a, the health units that make up the CHULC, EPE, will send the mentioned data to the ANSR, without, however, specifying in the Protocol the periodicity with that such shipment should take place. It is therefore essential to fill in the blank space left in this clause.

8. In turn, paragraph 3 provides that the data collected and recorded by the Second Party must be sent to the First Party by means of electronic transmission with a high level of information security, and the data format, the respective attributes and the form of transmission thereof shall be subject to a written agreement between the parties. The CNPD warns, first of all, of the need to specify the specific security measures adopted with a view to guaranteeing the principle of completeness and

confidentiality provided for in paragraph f) of article 5 of the GDPR, the generic formulation not being sufficient used which is repeated in point 3 of the same clause.

9. On the other hand, the CNPD emphasizes that such measures must be included in the text under analysis, rather than referring to a new written agreement between the parties. Therefore, it is suggested that this item be reformulated in order to specify the information security measures adopted and other information relating to the transmission of the information in question.

10. As for Clause 3 (Obligations of the 1st Party), paragraph 2 states that "the First Party will proceed to anonymize the personal data of drivers of vehicles and means of circulation equivalent to bicycles that have received hospital care, sent by the Second Party ». However, this provision raises several doubts: from the outset to what types of data it refers, since the list of paragraph 1 of Clause 2.a does not contain direct identification data. In any case, it is recommended that personal data that are likely to allow the identification of the respective holders be converted into data ranges, to reduce the risk of identification or re-identification - this is specifically

recommended for age data. Furthermore, the CNPD is unaware of the relevance for the purpose of the treatment of gender data and, above all, that of nationality, and it appears prima facie that, by virtue of the principle of data minimization, such data are not subject to processing (under Article 5(1)(c) of the GDPR).

11. In addition, there is no reason why anonymization should not be carried out at source, as it becomes an obligation of the entity that sends the information. Finally, nothing is said about when the anonymization is performed, nor how the deletion of the original data is guaranteed, nor what is the estimated re-identification rate.

12. It is therefore important to clarify this Clause 3.a, explaining, after careful consideration of the need for its treatment, whether the data covered herein are those listed in paragraph 1 of Clause 2.a or if we are dealing with the processing of other personal data (listing them), which require anonymization and, if so, explain the way in which it is processed.

13. Paragraph 2 of Clause 5.a is strange, which is certainly the result of an oversight, as it does not respect the processing of data in question. In fact, it should be noted that the grantors undertake to guarantee the confidentiality of all information obtained as a result of the commitment assumed by each of the parties to the other, namely regarding their organization, business activity or others, prices, services provided and any other data of a commercial and/or technical nature, which cannot be disclosed without the prior authorization of the other party, is not applicable to the transmission of information regulated by this Protocol. It is therefore suggested to eliminate this point.

14. Likewise, it is recommended to eliminate paragraph 4 of this Clause, regarding the classification of the information sent as confidential, as it is manifestly unrelated to the purpose of the Protocol.

15. As for Clause 6.a, under the heading “Protection of personal data”, in paragraph 1, it is stated that the grantors must observe the legal provisions in force in terms of data protection, namely: a) Respect the purpose for which the consultation was authorized, which should be limited to what is strictly necessary, not using the information for other purposes; [...] c) Take the necessary security measures to prevent any act aimed at altering the content of the database data or interfere in any way with its proper functioning.

16. This paragraph a) clearly contradicts Clauses 1:a and 2.a, which only provide for the sending of information by CHULC, EPE, to ANSR, now referring to a new processing of data that is embodied in in the authorized "consultation" of personal data. Likewise, subparagraph c) of the same Clause, which invokes the "adoption of security measures to prevent any act aimed at altering the content

of the database or interfere in any way with its proper functioning", concerns the constitution of a personal data base that has never been mentioned before. In fact, Clause 1,a of the Protocol, which defines its scope, only indicates the treatment and statistical records that cannot contain any personal data capable of identifying the holders.

17. These contradictory provisions and the omissions noted do not allow the CNPD to formulate a reasoned judgment on the processing of data provided for in this Protocol. The text under analysis does not provide clear indications on all types of

treatments that may be intended, in addition to sending the information listed in Clause 2.a from the second party to the first party and the statistical recording of the information.

18. Paragraph 3 of Clause 6.a provides for the existence of subcontractors, referring only to the duty of confidentiality to which they are subject, and is silent on their obligations under paragraphs 2 to 4 of article 28. ° of the GDPR. In this way, it is suggested to densify this point by inserting specific and concrete references to the obligations of subcontractors.

19. Finally, considering that we are dealing with personal data, the CNPD recalls the need to carry out an impact assessment on data protection (AIPD) under the terms of paragraph 4 of article 35 of the RGPD and n. 6 of CNPD Regulation No. 798/2018, of 30 November, concerning the list of personal data processing subject to an Impact Assessment on Data Protection, before the implementation of this protocol.

III. Conclusion

20. Based on the above grounds, the CNPD recommends:

The. The reformulation of paragraph 3 of Clause 2.8, specifying the information security measures adopted and regulating the transmission of data in question in order to be included in this Protocol;

B. Clarification of this Clause 3.a, after careful consideration of the need to process the categories of data, explaining what types of data are in question and to which anonymization applies, specifying the way in which it is processed;

ç. The elimination of paragraphs 2 and 4 of Clause 5.a;

d. The clear provision in Clause 6.a of the existence of other processing of personal data in addition to those defined in Clause 1, relating to the scope of the Protocol, which, if any, require regulation;

and. The densification of paragraph 3 of Clause 6.a in order to insert concrete references to the obligations of subcontractors enshrined in paragraphs 2 to 4 of article 28 of the GDPR.

f. Carrying out an Impact Assessment on the Protection of Personal Data, before the implementation of this protocol.

Approved at the meeting of June 21, 2022

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