

## I. Order

1. The Secretary of State for Justice asked the National Data Protection Commission (CNPD) to issue an opinion on the Draft Ordinance that «Regulates electronic communications between the judicial courts or the Public Ministry and the National Security Authority bus station».

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 articles 57, no. 3(b); 36, no. 4, all of Regulation (EU) 2016/679, of 27 April 2016 - General Data Protection Regulation (hereinafter GDPR), in conjunction with the provisions of Article 3; 4th no. 2; 6, no. 1, point a), all of Law no. 58/2019, of 8 August, which implements the GDPR in the domestic legal order, as well as conferred by paragraph 2 of article 30. , in conjunction with paragraph 1 of article 43 and paragraphs a) and c) of paragraph 1 of article 44, all of Law n.° 59/2019, of 8 August.

3. The request did not come with the report on the impact study on data protection, required under the terms of paragraph 4 of article 18 of Law no. 43/2004, of 18 August, in the wording given by Law No. 58/2019, of August 8.

4. This request was received on December 20, 2021, for indictment issued until January 3, 2022.

## II. Analysis

5. The draft ordinance announces as enabling rules "paragraphs 2 and 5 of article 132, in paragraph 9 of article 144, in subparagraph a) of paragraph 5 of article 219. of the Code of Civil Procedure" (Law n.° 41/2013) - which is certainly due to a lapse, since the original ordinance falls within the scope of criminal proceedings or road traffic administrative proceedings -, as well as paragraph 2 of the Article 140 of Law No. 62/2013, of 26/Aug, commonly known as the Law on the Organization of the Judiciary System (LOSJ), which sets out the use of information technology in the processing of cases.

6. In its explanatory memorandum, it states as its purpose "to regulate the dematerialisation of communications between the

courts or the Public Prosecutor's Office and the National Road Safety Authority", in order to "allow access by electronic means, by the courts and the Public Prosecutor's Office, within the scope of legal proceedings, to the Individual Driver's Registry and the dematerialized communication of decisions to the National Road Safety Authority with repercussions on the Individual Driver's Registry".

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7. As mentioned therein, it is intended "to speed up communications between entities, the implementation of these measures will contribute to improving the efficiency of the processing of processes".

8. Such electronic communications, in accordance with article 2 of the draft ordinance, are essentially aimed at accessing information and processing electronic documents regarding the Individual Driver Registration (RIC), which is governed by Decree-Law No. 317/94, of 24/Dec. (RJRIC).

9. The Individual Driver's Registry (RIC) was established by the Highway Code (Decree-Law No. 114/94, of 03/May., successively amended), through the original article 145, remaining in the now current article 149, which must necessarily include, by imposition of paragraph 2, the crimes committed in the exercise of driving motor vehicles, the respective penalties and safety measures (a), the serious and very serious offenses committed and respective sanctions (b), the updated driving license score (c).

10. In turn, the added article 149-A of the Highway Code, through Decree-Law no. , the scope and data traffic relating to communications concerning the holder of the driving license, stipulating the following:

"1 - The competent inspection authorities, the courts and the ANSR communicate to the IMT, I.P., the momentary or permanent restrictions applicable to the holder of the driving license, namely those resulting from the revocation of the driving license and the prohibition or driving inhibition.

2 - The communications referred to in the previous number are made through the Public Administration Interoperability Platform.

11.0 Driver's Individual Record, which had its last amendment and was republished by Decree-Law no. record of infractions and the score associated with the driver's driving license, which is contained in a central computerized file" (article 1, paragraph 1 of the RJRIC).

12. The person responsible for the database is the president of the Autoridade Nacional de Segurança Rodoviária (ANSR) (Article 2(1) of the RJRIC).

13. Direct access to the database, in addition to the ANSR, of the competent services of the Autonomous Regions (article 7, no. 1 of the RJRIC), is also granted to judicial magistrates and the Public Ministry, to criminal police bodies within the scope of criminal proceedings, the Instituto da Mobilidade e dos Transportes Terrestres, I. P. (IMTT.IP), as well as the Guarda Nacional Republicana (GNR) and the Public Security Police (PSP) - cf. Article 7(2) of the RJRIC.

14. Anyone can also access your data (Article 11(1) of the RJRIC).

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15. However, this draft ordinance only regulates access by the judicial courts and the Public Prosecutor's Office, leaving out of its scope the other entities mentioned above, in item 13, such as the IMTT.IP., the GNR and PSP, and therefore there is a distortion between the legislative scope (wider) and the scope of the regulatory project (more restricted).

16. All the more so, to amplify this distortion, when there is a database in IMTT.IP. known as the National Register of Drivers (RNC) (Decree-Law No. 262/2009, of 28/Sep.) which is not the subject of this draft ordinance, with data from the ANSR, GNR, PSP and other entities referred to in n. 4 of article 5 of the latter diploma.

17. The identification data of the driver with a national driver's license are mentioned in lines a) to e) of paragraph 2 of article 4, while the driver with a foreign driver's license is mentioned in lines a) to f. ) of Article 5(2), both from the RJRIC.

18. However, the draft ordinance does not make this distinction between the identification of a qualified driver with a national title, which excludes the passport, with the driver qualified with a foreign title, which includes the passport, mentioning only in

paragraph 3 of article 2 .° of the project the following: "The identification of the driver is carried out by the number of the identity card, citizen's card, passport or driver's driving license"

19. However, in order to prevent identification errors, it is advisable to use more than one personal data in this context. With this in mind, the CNPD recommends that, in paragraph 3 of article 2, the reinforcement of the driver's identification with the driver's license number, if any, be considered.

20. In turn, the rules to guarantee information security are established in article 13 of the RJRIC, while the duty of professional secrecy of any person involved in the data processing operation is in the command established by paragraph 2 of the Article 10 of Law No. 58/2019, of August 8, and Article 25 of Law No. 59/2019, of August 8.

21. Thus, paragraphs 1 and 3 of article 3 of the draft decree, under the heading "Security measures" are merely "recurring" of the guarantees of information and the duty of professional secrecy enshrined in the aforementioned diplomas , in item 20, which jeopardizes the CNPD's assessment of the guarantees for the protection of personal data. The option, in paragraph 5, of referring to the protocol of the technical and functional specifications of interoperability implies that those security measures and guaranteeing the integrity and confidentiality of personal data are set out in the protocol text, which must be submitted to the CNPD for prior consultation, under legal terms.

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22. In paragraph 4 of article 3 of the draft decree, the provision that, in the circumstances described there, communications can be made by "any legally admissible means", must be accompanied by the imposition of adoption of measures of adequate security.

23. Paragraph 2 of article 3 of the draft ordinance should be praised, in specifying the "respective date and time, authors and process in which the communications in question took place", including requests for information (n. 2 of article 2 of the Project).

However, the reference to "users" in paragraph 3 of the same article raises doubts as to whether the wording of paragraph 2 covers the electronic record of all transactions carried out, including those of mere consultation of data. Bearing in mind that, in addition to paragraph f) of article 13 of the RJRIC, which provides that the transmission of data is subject to control, paragraph g) of the same article requires that "the introduction, consultation, alteration or deletion of personal data in automated processing systems is subject to control, in order to verify which data are introduced, consulted, altered or deleted, when and by whom, keeping the record of these operations for a period of four years", it is important to review the no. 2 of article 3 of the draft ordinance in order to ensure that it is in full compliance with the provisions of that legal instrument.

### III. Conclusion

24. Under the terms and on the grounds set out above, the CNPD recommends:

- a) Consideration should be given to expanding the scope of access in this draft ordinance to cover all referenced entities that have direct access to the existing database at the ANSR;
- b) That, in paragraph 3 of article 2, the reinforcement of the identification of the driver with the driver's license number, if any, be considered;
- c) The revision of paragraph 4 of article 3, in order to impose the adoption of adequate security measures;
- d) Taking into account the wording of paragraph 3 of article 3, the clarification of paragraph 2 of article 3, to ensure that electronic records unequivocally cover all operations on personal data carried out in the context of processing here subject to regulation.

Lisbon, January 3, 2022