

National Data Protection Commission

OPINION/2022/30

I. Order

1. The Institute of Registries and Notaries, I.P. (IRN) has submitted to the National Commission for Data Protection (CNPd) a draft protocol that aims to regulate the access of the municipal company AMBIFARO Gestão de Equipamentos Municipais, E.M (AMBIFARO) to the car registration, for the purpose of monitoring compliance with the Civil Code. Road 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 article 36(4) of the RGPD and in articles

3 and 4, no. 2, of Law No. 58/2019, of August 8.

3. The IRN, the Institute for Financial Management and Justice Equipment, I.P. are parties to the protocol. (IGFEJ) and the municipal company AMBIFARO.

4. As shown in the text of the protocol, the municipal company AMBIFARO is delegated powers to exercise powers in this area, by virtue of its statutes approved by deliberation of the Municipal Assembly of Faro on 1/21/2019.

5. Under the terms of Clause 1a of the protocol, AMBIFARO «is authorized to access vehicle registration information, by consulting the respective database online», located at IGFEJ, for the «exclusive purpose of pursuing the competence assigned to it is legally committed, within the scope of the supervision of the paid urban public parking system, in the territorial district of the Municipality of Faro, and for as long as the delegation of powers from that Municipality is in force».

6. 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 or lessee or usufructuary, and also the burdens and burdens'. (No. 1 of Clause 1a).

7. Access to the database is made through a search by vehicle registration and is conditioned to the mandatory identification of

the case number or of the news report to which they refer (cf. no. 1 of Clause 2.a).

8. For auditing purposes, accesses are recorded (logs) for a period of two years, in accordance with the provisions of paragraph 2 of Clause 2a of the protocol.

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9. Under the terms of Clause 3.a of the protocol, AMBIFARO must comply with the legal provisions contained in the RGPD and Law No. that it should be limited to what is strictly necessary, 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 AMBIFARO 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 the 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. Access to the car registration database between the two bodies can be done by one of the methods provided for in the protocol, and the implementation of IPSEC tunnels is also mandatory (cf.

4.a).

12. Also according to Clause 5.a of the protocol, AMBIFARO undertakes to previously communicate to the IRN the identification of the users of access to the database, indicating name and category/function, «TIN if necessary» and e-mail address , with a view to assigning the respective system access credentials. Access will be individualized, and each user will

receive a personal password, which will make him responsible for the use he makes of the service. The requests for creating and changing users are forwarded by the IRN to the IGFEJ to execute the requests.

13. Also according to clause 5.a, the IGFEJ will assign an application user and respective password to the municipal company, and each invocation of that user will be registered for audit purposes «for a minimum period of two years».

14. The protocol is concluded for a period of one (1) year, tacitly renewable for equal periods. The resolution of the protocol implies the immediate termination of AMBIFARO's authorization to access the car registration database (cf. Clauses 10.a and 11.a).

II. Analysis

15. Under the terms of subparagraph d) of no. 2 of article no. 27, °-D of Decree-Law no. 54/75, of 12 February, diploma that regulates car registration, the personal data of the car registration can be communicated, for

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pursuit of the respective attributions, to the entities responsible for supervising compliance with the provisions of the Highway Code and complementary legislation.

16. 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.

17. The possibility for AMBIFARO to access the car registration derives from the provisions of article 7, paragraphs 1 and 3, of Decree-Law no. of powers for municipal bodies in the field of public parking, provided for in article 27 of Law no.

18. To that extent, it is considered that there is a legitimate basis 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).

19. 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.

20. Regarding the communication of the identity of individual users by AMBIFARO to the IRN, the CNPD verifies that the requested personal data were extended in this protocol. Thus, in addition to the name and category/function, it is also foreseen

that the user's email address and TIN will be communicated to the IRN.

21. No justification is given for the request for this personal data and, in fact, it is not possible to see the relevance of the processing of these data by the IRN for the purposes indicated in Clause 5.a, that is, for the purposes of attributing credentials of access.

22. Regarding the "email" data, it is accepted that there may be reasons, not indicated, that support the collection of this personal data, namely if the email address is used as a username. If that is the case, the CNPD understands that such a solution should be rethought, since the (professional) email address is a personal data known to a wide universe of people, which immediately weakens an authentication composed of two elements . If the "email" data is collected for the purpose of individualized contact within the scope of user management (for example, password recovery), then such purpose must be specifically provided for in the text, and in any case it must also be added that this is the professional email address, as only this should be used in this context.

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23. Regarding the "NIF" data, which constitutes an identification number of citizens for tax purposes, the collection by the IRN of this personal data from users, whose access to the car registration is carried out in their capacity as employees of the company with supervisory powers in this field and in the exercise of legal powers in a professional context.

24. Therefore, the CNPD considers that it is not only appropriate and necessary to collect the NIF of users for the purpose of attributing access credentials, in violation of the principle of data minimization, recognized in article 5, no. 1(c) of the RGPD, as none of the legal conditions provided for in Article 6(1) of the RGPD are met, so the IRN has no legitimacy to process the NIF of AMBIFARO users who access the car registration in the performance of their professional duties.

25. Also with regard to records for auditing purposes (logs), mentioned in paragraph 2 of Clause 2.a and in paragraph 5 of

Clause 5.a, the wording of the protocol is equivocal, regarding the type of logs made; who carries out these registrations, if the IRN/IGFEJ, if AMBIFARO; and what exactly is its shelf life.

26. In fact, on the one hand, it is not stated whether there is a record of logs of individual users, allowing the access and activity of each worker to be monitored (despite declaring that each one is responsible for the use they make of the service) and who records and retains that information, it being only clear that application user logs are made, predictably by the IRN/IGFEJ.

27. On the other hand, while it is indicated that the logs referred to in Clause 2.a have a conservation period of two years, therefore a maximum period, the retention period of the application user's logs referred to in Clause 5.a refers to a two-year minimum term, thus no maximum term is defined.

28. In addition to the records relating to the single application user, the logs of individual users must also be recorded, both by the IRN/IGFEJ, to allow effective control of the conditions of access and use of data.

29. In this sense, the IRN must expressly indicate in the text of the protocol that records of individual users are made for auditing purposes, who does it, and for what period these records are kept. Identical information must be included regarding the application user, so that it is clear how access is controlled and by whom.

30. As regards the security measures envisaged for the transmission of data, as well as the obligation provided for in paragraph 3 of Clause 3.a, they seem generally appropriate.

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31. 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.

32. A final note to point out a clear lapse regarding the entity mentioned in subparagraph a) of paragraph 1 of Clause 4.a of the protocol.

III. Conclusion

33. The CNPD considers that AMBIFARO, E.M. has legitimacy for access to personal data from the car registration, within the

limits and conditions recommended by this protocol, with the changes resulting from this opinion.

34. Thus, the CNPD considers that the need to process the "email" data must be reconsidered and, if its need is justified, the text of the protocol must specify that it is a professional email address and for what purpose it is processed. .

35. With regard to the processing of the "NIF" data, the CNPD considers that the IRN does not have the legitimacy to process this personal data of users in the context of the performance of its professional functions, so the text of the protocol must be amended in accordance.

36. Finally, the clause must specify which entity records the individual accesses of users for auditing purposes and the periods for keeping logs for individual users and for the application user must be clarified and made more coherent.

Approved at the April 5, 2022 meeting

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