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Ê NATIONAL COMMISSION ON DATA PROTECTION

OPINION/2020/110

I. Order

The Institute of Registries and Notaries, I.P. (IRN) requested the National Data Protection Commission (CNPD) to issue an opinion on a protocol aimed at regulating access to TUB - Transportes Urbanos de Braga, E.M. (TUB) 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 municipal council.

The request is made under paragraph 7 of article 27-E of Decree-Law no. 54/75, of 12 February¹, which regulates car registration.

The CNPD issues an opinion within the scope of its attributions and powers, as an independent administrative authority with powers of authority to control the processing of personal data, conferred by subparagraph c)6, paragraph 1 of article 57 and paragraph 4. of article 36 of Regulation (EU) 2016/679, of 27 April 2016 - General Data Protection Regulation (GDPR), in conjunction with the provisions of article 3, paragraph 2 of article 4, and in paragraph a) of paragraph 1 of article 6, all of Law no. 58/2019, of 8 August.

The IRN, the Institute of Financial Management and Justice Equipment, I.P. (IGFEJ) and TUB, as a municipal company with delegation of powers of authority by the Municipality of Braga, under the terms of article 27 of Law no. meeting of the municipal executive of 10/21/2019.

Pursuant to Clause 1.a of the protocol, TUB “is authorized to access information on the vehicle registration by consulting the respective database”, located in the IGFEJ, for the “exclusive purpose of pursuing the competence assigned to it”. legally committed, by delegation of the Municipality of Braga, within the scope of monitoring compliance with the provisions of the Highway Code and complementary legislation on public roads under its jurisdiction, including limited-time parking and car parks in the area of the aforementioned Municipality ».

The following data are accessed: «name, usual residence, number and date of identification document and tax identification number, when available, or firm, registered office and number

1 As amended by Decree-Law No. 111/2019, of 16 August.

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of a legal person, of the owner or lessee or usufructuary, as well as the burdens and charges” (No. 1 of Clause 1.a).

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).

For audit purposes, accesses are registered (iogs) for a period of two years, in accordance with the provisions of paragraph 2 of Clause 2.a of the protocol.

Pursuant to Clause 3.a of the protocol, TUB must comply with the legal provisions contained in the RGPD and Law no. limit yourself to what is strictly necessary, not using the information for other purposes; not transmit the information to third parties; take the necessary security measures to ensure the integrity and proper functioning of the database. Any form of interconnection of personal data is also prohibited.

It is also foreseen that, if TUB 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 commitment to confidentiality 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.

The method of accessing the car registration database has not yet been decided, although any of the alternatives envisaged is acceptable, with the obligation to implement IPSEC tunnels to guarantee data confidentiality (cf. Clause 4.a).

Also according to Clause 5.a of the protocol, the IGFEJ will assign an application user and respective password to the TUB to access the web services made available, being registered in the audit system for a minimum period of two years each invocation of the application user. TUB undertakes to communicate to the IRN the list of persons authorized to access the database.

The protocol is concluded for a period of one (1) year, tacitly extendable for equal periods. The revocation of competence of the Municipality of Braga in the TUB, within the scope of the inspection of the paid urban public parking system, constitutes a

cause for resolution. THE

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resolution of the protocol implies the immediate termination of TUB's authorization to access the car registration database (cf. Clauses 10.a, paragraphs 2 and 4, and Clause 11, a).

II. appreciation

1. Under the terms of subparagraph d) of no. 2 of article no. 27-D of Decree-Law no. 54/75, personal data from the car registration may be communicated, in order to carry out the respective attributions, the entities responsible for monitoring compliance with the provisions of the Highway Code and complementary legislation.
2. Also in accordance with paragraphs 2 and 3 of article 27-E of the same diploma, these entities may authorize online consultation of data transmission, provided that security guarantees and subject to the conclusion of a protocol that defines the limits and conditions of access.
3. The possibility for TUB to access the car registration derives from the combined provisions of Article 5(1)(d) and No.3(c) of Decree-Law No. 44/ 2005, of 23 February, in its current wording, since the powers provided for therein for municipal companies were delegated by the Municipality of Braga, in accordance with the provisions of article 27 of Law No. 50/2012 .
4. 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 Data Protection Regulation (GDPR).
5. The mandatory rule of indicating the case number that supports access as a condition for the continuation of the research and consequent access to data is highlighted as positive and essential.
6. It should be noted, however, that despite the provision in two separate rules of the existence of access logs for auditing purposes (cf. no. 2 of Clause 2.a and no. 2 of Clause 5a), in no In most cases, it is expected that this registration will be associated with the identification of the end user. Now, in order to guarantee the individual tracking of each user, which makes him responsible for the legitimacy of the accesses he makes, it is essential that, in addition to the registration of the application user, which is generic, the identity of the person accessing the database is recorded. of the car registration. To make this possible, the protocol

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it must provide for a provision regarding individualized access per user, upon proper accreditation and respective registration.

7. In fact, the list of end-users with the possibility of accessing the database, provided for in the legal regime of car registration, aims to allow tracking of the activity of each user, which is only possible if the user has unique access credentials. and your individual activity is registered in tog.

8. A provision must also be added to the protocol, similar to the text of previous protocols, which provides for the TUC's responsibility for accessing the car registration database and for the subsequent use that may be made of that personal data, within the scope of the powers delegated to it.

9. 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.

III. Conclusion

The CNPD considers that there is legitimacy for access by TUC - Transportes Urbanos de Braga, E.M. personal data from the car registration, within the limits and conditions recommended by this protocol.

However, it is essential that a provision be added to the text of the protocol that provides for the obligation to record, for audit purposes, the individual activity of each end user, who must be identified through unique access credentials, as explained in points 6 to 8 of this opinion.

Approved at the meeting of September 15, 2020

Filipa Calvão (President)