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r NATIONAL DATA PROTECTION COMMISSION

OPINION/2020/101

## I. Order

The Secretary of State for the Presidency of the Council of Ministers asked the National Data Protection Commission (CNPd) to issue an opinion on the Draft Decree-Law No. of passengers, the data processing rules of the people who travel on them and creates an inspection system for other vessels, transposing Directive (EU) 2017/2108, Directive (EU) 2017/2109 and Directive (EU) 2017 /2110, all of November 15th and also making the second amendment to Decree-Law No. 61/2012, of March 14th.

The request made and the opinion issued now derive from the attributions and powers of the CNPD, as the national authority for controlling the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and paragraph 0 4 of article 36. of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of article 3, paragraph 2 of the article 4 and paragraph a) of paragraph 1 of article 6, all of Law n.º 58/2019, of 8 August.

The assessment of the CNPD is limited to the rules that provide for or regulate the processing of personal data.

## II. appreciation

The Draft Decree-Law regulates the processing of personal data, in Chapter III, under the heading Procedures for counting and collecting, recording and communicating data on people traveling on passenger ships operating from or to national ports. It establishes that the companies that operate the ships covered by this project are required to have a system for recording data on the people on board and counting all the people boarding at each national port. Also subject to this obligation are companies that operate ships flying the national flag and departing from ports of third countries to

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national or European Union ports and also ships flying the flag of third countries departing from ports outside the European

Union to national ports.

The personal data to be collected are name, gender, nationality, date of birth. Information about special care or assistance and a contact number that may be necessary in emergency situations are also collected, when voluntarily made available by passengers (cf. subparagraphs a) to c) of paragraph 1 of article 26 of the Project).

The Project mentions, both in paragraph 2 of article 25 and in paragraph 2 of article 26, that the data collected must be declared by appropriate electronic means.

The General Directorate of Natural Resources, Safety and Maritime Services (DGRM) is responsible for approving and certifying the data recording systems implemented by the companies (cf. paragraph 2 of article 29), which are established by decree of the member of the Government responsible for the area of maritime transport and ports (see no. 4), ordinance that must be the subject of an opinion by the CNPD.

It is in article 32 that it is indicated that the processing of personal data provided for in this Project is subject to compliance with data protection rules (see paragraph 1). However, surely by mistake, the processing of personal data is only subject to the provisions of Law No. 58/2019, of 8 August. Since the GDPR is a European Union Regulation, it has a general character, is mandatory in all its elements and directly applicable in all Member States, under the terms of Article 288 of the Treaty on the Functioning of the European Union. For this reason, and having reinforced value, as it is European Union law, the processing of personal data regulated in the Project is subject to the GDPR, as it could not be otherwise, and also to Law No. 58/2019, of 19 of August. The standard must therefore be corrected accordingly.

The DGRM is, under the terms of paragraph 2 of the aforementioned article 32, responsible for the electronic processing of personal data<sup>1</sup>. It is therefore up to you to comply with all the obligations provided for in the GDPR and in Law No. 058/2019, of 8 August.

<sup>1</sup> The reference to electronics is no longer relevant, as the GDPR applies regardless of the personal data medium, i.e., whether the data is processed electronically or on paper.

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No. 3 of this article indicates who and under what conditions there is access to information<sup>2</sup> and no. 4 reaffirms the purpose principle by establishing that the personal data collected cannot be processed or used for other purposes, and must be deleted

automatically and without undue delay as soon as they are no longer needed.

The information retention period is set in paragraph 5 of this article 32 and complies with the provisions of paragraph 1 of article 5 of the RGPD.

### III. Conclusion

On the above grounds, the CNPD understands that this Project does not raise reservations from the perspective of the protection of personal data, only leaving the note of the need to clarify paragraph 1 of article 32 of the Project so that it expressly refers subjection to the GDPR.

Lisbon, August 18, 2020

Filipa Calvão (President, who reported)

2 The entity responsible for search and rescue operations or other operations necessary following an accident

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