

## I. Order

The Office of the Minister of the Sea sent the National Data Protection Commission (CNPd), for consideration, the draft decree-law that establishes the legal regime for the professional activity of seafarers.

The request made and the opinion issued now derive from the attributions and powers of the CNPD, as an independent administrative entity with powers of authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and by the no. 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 no. Article 21(1) and Article 22(1), both of Law No. 67/98, of October 26, amended by Law No. 103/2015, of August 24 (Law of Personal Data Protection).

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

## II. appreciation

This draft decree-law, to be issued under an authorization law, aims to simplify and dematerialize the procedures relating to the legal regime of the maritime professional activity, providing for and regulating the processing of personal data, some innovative, others with changes in part of its elements.

In general, the draft diploma precisely defines the main aspects of the different data processing, here highlighting only the points that raise doubts or reservations to the CNPD.

It should be noted that part of the standards contained in the Project correspond to the transposition of Directive 2012/35/EU, of November 21, 2012, which amends Directive 2008/106/EC, and that the content of the project, regarding data processing 198/XIII/4.a, still under consideration in the Assembly of the Republic, by which the Government is authorized to establish requirements for access to the professional activity of seafarers, and which includes, among

other aspects of the regime, the list of personal data whose treatment the Government is authorized to regulate, as well as the authorization to establish the exclusive processing of the procedures via an electronic platform (Balcão Eletrônico do Mar) and also the prohibition of consumption of alcohol and psychotropic substances in the exercise of functions.

#### 1. SNEM database

With regard to the database that gathers information on vessels and seafarers (SNEM), article 6 defines the person responsible for processing - the General Directorate of Maritime Resources (DGRM) and article 7 defines the data personal of those constants.

The adequacy and necessity of most of the data are highlighted, with the exception of the place of birth, which, from the perspective of the CNPD, does not seem essential, also considering that, as recent times have shown, its treatment is likely to generate discrimination. . In any case, it is also recognized that this data is specified in the final wording of the aforementioned Authorization Bill, so it is accepted that, at this stage, the Government cannot omit its inclusion in the list of processed data. It also takes the opportunity to emphasize that the information contained in medical certificates and certificates must be limited, in accordance with the provisions of article 8 of the Project and with the principle of minimization of personal data (enshrined in subparagraph c) of no. 1 of article 5 of the RGPD), the reference to the aptitude or non-aptitude for the performance of the maritime activity.

In order to “feed” and update the aforementioned database, Article 7(5) provides for interconnections, which correspond to autonomous processing of personal data.

However, in paragraph 3 of article 59, only the interconnection with the citizen's card database is specified - referring its regulation to a protocol between the entities responsible for the two databases, duly identified (DGRM and Instituto dos

Registos e Notariado, I.P., hereinafter IRN, IP). Now, if this interconnection can be considered adequate and necessary, the reference at the end of that

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provision for protocols to be concluded “with other public entities with competence in the matter, when applicable” is not sufficiently dense to legitimize, from the outset, other interconnections, nor is it sufficiently explicit as to the possible other signatories of the regulatory protocol for that interconnection. This is because there are no known entities responsible for the citizen card database other than the IRN, IP.

The CNPD therefore recommends that, for reasons of legal certainty, it is indicated that other entities may have competence in this matter.

Still in the context of article 6, it is important to mention the creation of the electronic one-stop shop system - the Electronic Balcão do Mar - for the interactions of different stakeholders with the public administration. This portal or interoperability platform is not, however, regulated in this Project, and nothing is said, from the outset, as to who manages it or as to the security measures to be adopted.

As it is true that personal data is transmitted through it, it is important at least that, in addition to the reference in paragraph 5 of article 7 to the legal regime of data protection, it is specified here which entity is responsible for its management ( and its exact quality, within the scope of personal data processing operations, under the terms of the RGPD: whether it acts as a subcontractor or as a co-responsible), even though the exact terms in which the transmission of personal data takes place and the regulation of access to the platform to be defined in the regulatory plan.

It should be added that Article 6(9) determines that, as far as information on training is concerned, interoperability is the responsibility of the training entities themselves. It is important, however, to emphasize that the way in which these entities access the aforementioned portal must be defined centrally, by the same entity that will manage the Balcão Eletrônico do Mar. In this way, the CNPD recommends reviewing article 6 in the point referring to the Electronic Balcão do Mar, to specify who is responsible for its management and what is their role in the transmission of personal data, in accordance with the provisions of the RGPD.

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## 2. Single Maritime Document

In addition to the provision for the issuance of other administrative acts involving the processing of personal data, the project provides, in article 62, for the single electronic document of the seafarer. In this regard, it is only important to mention that the personal data contained therein (namely, those relating to identification), to be defined by decree, must be limited to those strictly necessary for the purpose of identifying the seafarer, in compliance with the principle of data minimization, and may therefore be justify that it does not contain all the identification data contained in the SNEM.

In any case, the prohibition contained in Article 64(2) of the Project is welcomed.

## 3. Registration of certificates

Article 89 of the Project provides for the creation of a database that includes all professional certificates issued for this field of activity, and other equivalent documents.

Although it is understood that this is the transposition of a rule of Directive 2012/35/EU, of 21 November 2012, which is based on the adequacy and need to maintain the history of certificates, the truth is that the conservation and availability of personal data complies with the principle of proportionality (cf. point c) of paragraph 1 of article 5 of the GDPR and, specifically regarding the retention of personal data, point e) of paragraph 1 of the same article). To that extent, the CNPD recommends that a “soft deletion” system be adopted, that is, that an adequate period of information conservation in the aforementioned database be set here in order to guarantee its accessibility as long as it is relevant, after which , the information will become a file, not immediately accessible.

This database is accessed by entities from other Member States of the European Union and also by third States that are signatories of the International Convention on Standards for Training, Certification and Watchkeeping for Seafarers, of 1978, as stated in article 93 of the Project, which may therefore imply international transfers of data, duly framed by the Convention.

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#### 4. Submission of statistical data

Finally, it should be noted that article 96 of the Project provides for the communication of data for statistical purposes to the European Commission, which, in order to comply with data protection rules, is subject to an anonymization process under the terms of paragraph 3 of the same article. To that extent, the CNPD has nothing to oppose this forecast.

#### III. conclusions

On the grounds set out above, the CNPD recognizes that the Proposed Decree-Law adequately regulates the generality of the processing of personal data provided for therein, without prejudice to some aspects of the regime requiring greater precision or explanation. In particular, the need to:

The. Clarify the provisions of paragraph 3 of article 59, when referring to protocols to be concluded “with other public entities with competence in the matter, when applicable”;

B. Revise article 6, in the point referring to the Electronic Balcão do Mar, to specify who is responsible for its management and what role it plays in the transmission of personal data, in accordance with the provisions of the RGPD;

ç. Establish an adequate period for storing the information in the database provided for in article 89, in order to guarantee its accessibility as long as it is relevant, after which the information will become an archive, not immediately accessible.

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