

NATIONAL DATA PROTECTION COMMISSION

OPINION/2019/62

I. Order

The Office of the Secretary of State for Justice sent the National Data Protection Commission (CNPd), for consideration, the Draft Decree-Law on Ship Registrations, which amends Decree-Law 96/89, of 28 March, which creates the Madeira International Ship Register.

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 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 and point a) of paragraph 1 of article 6 of Law no. 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 (hereinafter, Project), in its article 3, makes the ninth amendment to Decree-Law no. a second registry of Portuguese ships: the International Ship Registry of Madeira, abbreviated as MAR, which is responsible in particular for the registration of all acts and contracts relating to ships subject to it (trade, even if under construction, and recreational craft) and control of the safety requirements required by the applicable international conventions (cf. article 1, paragraph 1 of the Project). MAR's services are integrated in the Private Commercial Registry Office of the Free Trade Zone of Madeira.

Reasons for improving the quality of service and international competitiveness are at the origin of this new amendment proposal, which aims to simplify and speed up registration deadlines and procedures.

In this sense, and from the point of view of the protection of personal data, it is important to analyze the “computer processing” to which the registration of ships will be submitted, as well as the regulation of the provisional registration of ships.

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1. The «computer processing» of ship registration

In accordance with what is proposed in Article 14-A introduced in Decree-Law No. 96/89 by Article 3 of the Project, it is intended to subject the registration of ships to "computer processing", archiving in electronic form the «requirements and documents that serve as a basis for registration», namely the documents that title the facts subject to registration, proceeding with their electronic filing, «as soon as the technical conditions allow», under the terms to be determined by order of the Chairman of the Board of Directors of the Institute of Registries and Notaries, I.P. (IRN, IP) - cf. Article 14a(2) and (3). However, from the reading of paragraph 4 of the same article, it seems that in the end the expression "electronic file" does not mean, or does not only mean, the electronic repository of documents submitted by the interested parties. In fact, a combined reading of paragraph 2 and paragraph 4 of article 14-A and paragraph 1 of article 14-C makes it possible to conclude that, in addition to the electronic file of registration requests and attached documents, the computer processing of the registration also includes the electronic registration of the facts indicated for the purpose of registration in the application and in the documents presented.

Therefore, considering that documents and requests will, as a rule, contain personal data, as they include identification and contact information of the owners or charterers of the ships when they are natural persons, it is important that appropriate technical and organizational measures are defined to guarantee the security of this information, having taking into account its new support, in light of the provisions of Article 5(1)(f) and Article 32(1)(a), b) and c), both of the GDPR.

At the same time, Article 14-B provides for the possibility for the application for registration to be submitted "electronically", and Article 14-F states that certificates may be made available electronically. In both cases, the definition of the terms in which this will take place is referred to the ordinance of the member of the Government responsible for the area of justice.

In defining the conditions, namely security, of the communication of information, the principles and rules of the RGPD must be taken into account.

2. The provisional registration of ships

Articles 15-A et seq. introduced by Article 3 of the Project regulate the provisional registration of ships. Since its provision is not new, since it was already included in Article 15.

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of Decree-Law no. 96/89, the aforementioned precepts define the respective procedure, as well as the issuance of a temporary registration certificate, indicating the information that must be included therein.

The definition of the certificate model is again referred to the ordinance, recommending to the CNPD that, in order for this diploma to serve as a basis for the lawfulness of the processing of personal data associated with such provisional registration, paragraph 2 of article 15 - C define exhaustively which data are part of such a model, therefore suggesting the removal of the expression “at least”.

Furthermore, the CNPD reiterates the importance of defining appropriate technical and organizational measures to guarantee the security of information, taking into account its new support, in particular, in light of the provisions of article 5, paragraph 1, point f), and Article 32(1)(a), b) and c), both of the GDPR.

Lisbon, October 1, 2019

Filipa Calvão (President)

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