

National Data Protection Commission

OPINION/2023/34

I. Order

1. The Secretary of State for the Presidency of the Council of Ministers requested the National Data Protection Commission (CNPD) to issue an opinion on the draft Decree-Law No. 115/XXIII/2023, which establishes the conditions and procedures certification and recognition of the qualifications of persons involved in the operation of vessels sailing on inland waterways, transposing Directive (EU) 2017/2397, of the European Parliament and of the Council, of 12 December 2017, on the recognition of professional qualifications in inland navigation, of Delegated Directive (EU) 2020/12, of the Commission, of 2 August 2019, which complements the said directive, with regard to standards of competence and the corresponding knowledge and skills, to practical exams, approval of simulators and medical fitness and Directive (EU) 2021/1233, of the European Parliament and of the Council, of July 14, 2021, which amends Directive (EU) 2017/2397, of the European Parliament and of the Council, of 12 December 2017, with regard to transitional measures for the recognition of certificates from third countries. This draft decree-law also implements Implementing Regulation (EU) 2020/182, of the Commission, of 14 January 2020, on models of certificates and other documents in the field of professional qualifications in inland navigation.

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

II. Analysis

3. The draft Decree-Law aims to establish the conditions and procedures for certifying the qualifications of persons involved in the operation of vessels sailing on inland waterways, as well as for the recognition of these professional qualifications, transposing the Directive (EU) 2017/2397, of the European Parliament and of the Council, of December 12, 2017, on the

recognition of professional qualifications in inland navigation, of Delegated Directive (EU) 2020/12, of the Commission, of August 2, 2019, which complements the said Directive, with regard to standards of competence and the corresponding knowledge and skills, for practical examinations, approval of simulators and medical fitness and Directive (EU) 2021/1233 of the European Parliament and of the Council, of July 14, 2021 amending the Directive (EU)

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2017/2397, of the European Parliament and of the Council, of December 12, 2017, with regard to transitional measures for the recognition of third-country certificates, as well as implementing Commission Implementing Regulation (EU) 2020/182 , of January 14, 2020, on models of certificates and other documents in the field of professional qualifications in inland navigation.

4. It is important, first of all, to point out that the present draft Decree-Law is not supported by an impact study on the protection of personal data - which is, remember, mandatory under the terms of paragraph 4 of article 18 of Law No. 43/2004, of August 18, amended by Law No. 58/2019, of August 8. The absence of said impact study compromises a more complete assessment by the CNPD as to the likely risks arising from the processing of personal data.

5. The draft decree-law is applicable to deck crew, experts in liquefied natural gas and experts in passenger transport of the types of vessels provided for in paragraph 1 of article 2 operating on inland waterways:

6. Under the terms of article 4 of the Project, the Directorate-General for Natural Resources, Safety and Maritime Services (DGRM), as the national maritime administration, is the competent entity to, namely, conduct the certification and recognition procedures of the qualifications of the crew of vessels that sail on inland waterways, issue the respective certificates and monitor and supervise the activity of training entities that provide training courses under the present legal regime.

7. It is envisaged that the information relating to the crew of vessels sailing on inland waterways and all the facts relating to the

exercise of their activity be entered in the National System of Vessels and Maritimes (SNEM), created by Decree-Law no. 43/2018, of June 18, to which entities involved in procedures have access - cf. Article 5(1).

8. Analyzing the draft Decree-Law from the point of view of its compliance with the legal regime for the protection of personal data, it is important to note that paragraph 3 of article 5 provides that «The DGRM is the entity responsible for managing SNEM and Balcão Eletrônico do Mar (BMar) and for processing the data entered therein, under the terms and for the purposes set out in the legislation in force on data protection, ensuring the right to information and access to data by the respective holders, correction of inaccuracies and omissions and deletion of data improperly registered, as well as guaranteeing access by other entities under the terms set out in article 5 of Decree-Law no. 43/2018, of 18 June ».

9. Thus, the DGRM is responsible for the processing of data entered in the SNEM in accordance with paragraph 7) of article 4 of the RGPD, and it is responsible for guaranteeing the rights of data subjects.

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10. Article 6 of the Project, concerning the protection of personal data, provides that the data processing provided for in the Project is carried out in accordance with the legislation regarding the protection of personal data in force.

11. In paragraph 2 of this article, it is established that the identification elements of the holder contained in the SNEM are collected and processed. Bearing in mind that paragraph 3 states that the data relating to the registration and exercise of the professional activity of the crew of vessels sailing on inland waterways are included in the SNEM, listing them does not remove the usefulness or autonomy of that forecast. In any case, if paragraph 2 is maintained, it is recommended that the expression identification elements be replaced by personal data or information relating to the holder, since the list presented in paragraph 3 contains many data that do not fit into the category of identifying data.

12. The SNEM contains the following information regarding the crew of vessels that sail on inland waterways and that correspond to personal data, under the terms of paragraph 1) of article 4 of the RGPD: name; naturalness and nationality; gender; marital status; household; E-mail address; mobile phone contact; signature; civil identification number and expiration date; Tax Identification Number; photography; date of death; number and date of maritime registration; training for the intended category and professional experience; ticket category; other categories and training acquired; diplomas and certificates related

to the professional activity and respective validity; embarkations and disembarkations, vessels, type of vessel and functions performed; suspension, cancellation and renewal of DMar; medical certificates and their expiry date. The personal data subject to processing are appropriate and necessary for the purpose in question in compliance with the principle of data minimization enshrined in Article 5(1)(c) of the RGPD.

13. The SNEM also contains information regarding the composition of the crew list, which is made available by the local bodies of the AMN for the purpose of accounting the boarding time.

14. It is important to leave a note here regarding the processing of health data contained in medical certificates to underline that they only concern the aptitude or non-aptitude of the person concerned to perform the functions. Under the terms of article 23 of the Project, the presentation of the medical certificate to the DGRM is mandatory for the issuance of the first deck crew qualification certificate and vessel master qualification certificate. The valid medical certificate must be issued pursuant to Articles 8 and 9 of Decree-Law No. 166/2019, of 31 October.

15. Moreover, the processing of health data is lawfully based on subparagraph h) of paragraph 2 of article 9, with medical certificates being necessary to certify the ability to work of the people involved in the

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operation of vessels navigating on inland waterways, on the basis of Union or Member State law.

16. However, paragraph 5 of article 6 must be reformulated, as the statement in sub-paragraph d), that the treatment of the holder's identification data is carried out in the production of statistics, is patently incongruous. Processing for statistical purposes assumes that it is subject to adequate guarantees for the rights and freedoms of data subjects, which include the adoption of technical and organizational measures that ensure respect for the principle of data minimization, firstly pseudonymization or even anonymization. In fact, in this case, it is not seen that there is a need to process personal identification data for the creation of statistics. It is accepted that the inconsistent wording of the precept results from the fact that the concept of identification elements of the holder is improperly used to characterize personal data.

17. It is recommended, therefore, that paragraph 5 of article 6 be revised, replacing the expression identification elements with

personal data or information relating to the holder, since the personal data to be processed go beyond identification data and, specifically for the purpose of producing statistics, these are not necessary at all.

18. Still under the terms of paragraph 6 of this article, interested parties whose personal data, namely health data, are collected and processed have the right to be previously informed and to consult, without restrictions, the data entered in the SNEM concerning him, as well as to request, through BMar, the updating of data and the correction of inaccuracies or omissions. This item aims to implement the right to information of data subjects, as well as the right of access and rectification provided for in articles 13 to 16 of the RGPD, recommending that the use of terminology consistent with the legal regime for the protection of data personal data. Therefore, it is recommended that instead of the right to consult, without restrictions, the right to access, without restrictions, be indicated (cf. article 15 of the RGPD). It is also underlined that the controller must provide the information referred to in Articles 13 and 14 of the RGPD.

19. On the other hand, the Project enshrines in paragraph 2 of article 5 that all the acts provided for in this Draft Decree-Law, as well as the respective processing, are carried out exclusively in a dematerialized way through the Electronic Counter of the Sea (BMar), accessible through the ePortugal Portal. The final decision, including, when applicable, the documents to be issued, is communicated to the applicant through BMar.

20. In turn, the diploma provides that, in case of impossibility of accessing or using electronic means, the interested party may resort to the services of the entities referred to in paragraph 6 of article 5, ensuring, in all case, the practice of the acts in a computerized way and the necessary mechanisms of automatic interoperability of data with the SNEM. Training entities develop interoperability mechanisms

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necessary to insert in the SNEM all the information regarding trainees and examinees and the courses taught.

21. On the other hand, article 40, concerning the prevention of fraud and other illicit practices, provides in paragraph 2 that the entities referred to in the previous number promote the exchange of relevant information with the competent authorities of other States. Members with regard to the certification of persons serving on vessels, including information on the suspension and withdrawal of certificates, without prejudice to respect for the principles of protection of personal data established in the

legislation in force. In this regard, it is recalled that such data communications must only respect the data strictly necessary for the purpose in question, in compliance with the principle of data minimization provided for in paragraph c) of paragraph 1 of article 5 of the RGPD.

22. Finally, Article 42 establishes a supplementary regime, applying with the necessary adaptations, the provisions of Decree-Law No. 166/2019, of October 31st - which establishes the legal regime of the professional's activity maritime. On the draft of this diploma, the CNPD has already pronounced itself through Opinion/2019/40 of October 2, 2019.

III. Conclusion

23. Under the terms and on the grounds mentioned above, the CNPD recommends:

- a) The amendment of paragraph 2 and paragraph 5 of article 6, in order to eliminate the expression identification elements - which is patently inaccurate - for personal data of the holder or for information relating to the holder, in accordance with the above, in points 11, 16 and 17;
- b) The replacement, in paragraph 6 of article 6, of the expression right to consult, without restrictions, by right to access, without restrictions, for greater consistency with the legal concepts used in the legal regime for the protection of personal data (cf. above, point 18).

Approved at the meeting of April 11, 2023

Filipa Calvao (President)

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