

## I. Order

1. The Commission for Economy, Public Works, Planning and Housing asked the National Commission for Data Protection (CNPd) to issue an opinion on Proposed Law No. 32/XV/1.3 (GOV) - «Authorizes the Government to establish rules for certifying the qualifications of persons involved in the operation of vessels sailing on inland waterways, for the transposition of Directives (EU) 2017/2397, 2020/12 and 2021/1233».

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. This proposed law aims to authorize the Government to establish the conditions and procedures for certifying the qualifications of persons involved in the operation of vessels navigating inland waterways, as well as for recognizing 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, supplementing the said Directive, as regards the 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 Directive (EU) 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 to implement 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.

4. Article 2 of the Proposed Law defines the meaning and extent of the legislative authorization, which includes, among other

aspects of the regime, the authorization to establish the exclusive processing of procedures via the Balcão Eletrónico do Mar, to establish that data relating to the conditions and certification procedures

Av. D. Carlos 1,134,1º 1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt

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of the qualifications of persons involved in the operation of vessels sailing on inland waterways can be transmitted to the European Commission and are included in the National System of Vessels and Maritimes, created by Decree-Law No. 43/2018, of June 18, specifying them, and also establish that persons involved in the operation of vessels sailing in inland waters are prohibited from performing any function under the influence of alcohol and psychotropic substances.

5. Now analyzing the Authorized Decree-Law, under the terms of its article 4, the Directorate-General for Natural Resources, Safety and Maritime Services (DGRM), as the national maritime administration, is the competent entity to conduct the procedures for certification and recognition 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.

6. 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 is entered in the National System of Vessels and Maritimes (SNEM), created by Decree-Law no. 43/2018, of June 18, which entities involved in the procedures have access to.

7. From the point of view of data protection, paragraph 3 of article 5 is relevant «The DGRM is the entity responsible for managing the SNEM and BMar and for processing the data entered there, under the terms and for the purposes set out in legislation in force on data protection, ensuring the right of information and access to data by the respective holders, correcting inaccuracies and omissions and deleting data improperly registered, as well as guaranteeing access by other entities pursuant to article 5 of Decree-Law No. 43/2018, of 18 June».

8. Also, under the terms of paragraph 6, 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 that concerning him, as well as to request, through BMar, the updating of data and the correction of inaccuracies or omissions. It should be noted that the health data contained in the medical certificates only concern the aptitude or non-aptitude of the person concerned for the performance of duties.

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.

10. In turn, article 6 provides that the holder's identification elements contained in the SNEM are to be collected and processed, the processing of which will take place in the situations described in paragraph 5.

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11. The Diploma under review provides that the Maritime Administration maintains, in the SNEM, records of data relating to qualification certificates, ballots and logbooks, and these are recorded in the database maintained by the European Commission. As for the retention period of personal data contained in the records or database referred to, paragraph 4 of article 37 provides that they cannot be stored longer than necessary to pursue the purposes for which the data were collected or for which they were subsequently processed, and must be destroyed as soon as the fulfillment of these purposes is ensured. It is recommended that an adequate period be set here for the retention of information in compliance with the principle of limitation of conservation provided for in paragraph e) of paragraph 1 of article 5 of the RGPD and the provisions of paragraph 1 of article 21 , of Law No. 58/2019, of August 8.

12. On the other hand, article 40, concerning the prevention of fraud and other illegal 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 Member States with regard to the certification of persons working 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. 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.

13. 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 of the maritime. The CNPD has already ruled on the draft of this diploma in Opinion 2019/40, of July 2, 2019.<sup>1</sup>

### III. Conclusion

14. The analysis of the Bill does not raise new questions from the point of view of personal data protection. It is only recommended, under the terms and on the grounds set out above, the setting of an adequate period for the conservation of personal data contained in the records and database provided for in paragraph 4 of article 37.

Available at <https://www.cnpd.pt/decisoes/historico-de-decisoes/?year=2019&type=4&ent=>

Av. D. Carlos 1,134,1o 1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

[www.cnpd.pt](http://www.cnpd.pt)

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Maria Cândida Guedes Oliveira (Rapporteur)