

National Data Protection Commission

OPINION/2022/117

I. Order

1. The Institute of Registries and Notaries, I.P. (IRN) came to request the National Data Protection Commission (CNPd) to issue an opinion on a protocol whose purpose is to define the procedures aimed at ensuring the availability to the National Maritime Authority (AMN) of information regarding the existence of registration and registration of burdens or charges levied on ships and vessels, through the sharing of information referred to in Decree-Law No. 43/2018, of 18 June and Decree-Law No. 93/2018, of 13 of November, amended by Decree-Law No. 84/2019, of June 28.

2. The CNPD issues an opinion within the scope of its attributions and competences as an independent administrative authority with authoritative powers for the control of 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 RGPD), 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 August, which implements the GDPR in the internal legal order.

II. appreciation

3. It begins by noting that, despite the provisions of Decree-Law No. 43/2018, of June 18th and Decree-Law No. 93/2018, of November 13th, amended by Decree-Law No. 84/2019, of June 28, the IRN states that it is not yet possible to carry out communications with the services involved through the Sea Electronic Desk (BMar), since the National System of Vessels and Maritimes (SNEM), which serves as the basis and structure for the new legal regime relating to the registration of ships and vessels and Bmar are not completely established and operational, and therefore it is urgent to stipulate the exchange of possible information and considered relevant, between the AMN and the registration services, while the said systems are not able to do so.

4. The protocol in question here is carried out under the provisions of paragraph l) of paragraph 2 of article 3 of Decree-Law no. 148/2012, of July 12, last amended by Law no. ° 89/2017, of August 21, of Decree-Law no. 43/2018 and also the provisions of nos. 2 to 4 of article 5 of Decree-Law No. 93/2018 which established the legal regime for recreational boating

activity and provided that the AMN is responsible for registering the ownership of Recreational Vessels (ER) and the IRN the registration of all other facts relating to the RE which, under the terms of article 10 of Decree-Law no. 92/2018, of 13 November, are subject to registration.

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5. The following data are processed: Enrollment; Book D; Front / Back Sheets; Name; Registration No.; Gross tonnage; Net Tonnage; Machine Construction Site; Date of Construction of the Machines; Hull Construction Site; Hull Construction Date; Hull Material; Hull Type; International Code of Signals; Captaincy / Delegation; Transfer Destination Service; Transfer Date; Cancellation Date; IMO; Design Category; Navigation Zone; Propulsion System; Owner(s); Charges / Charges; and, Presentation(s).

6. With the aim of creating a database that constitutes a tool for searching information about the existence of registrations, including registration, encumbrances or charges, the Conservatories proceed to upload information on all registered vessels.

7. The IRN provides AMN with access to consult the aforementioned information, in a reserved access area, implemented on the website at the address: <https://tinyurl.com/navios-irn>.

8. Control of access to information is carried out using access codes, consisting of an email box identification and password, assigned by the IRN to each Captaincy or Maritime Delegation to be indicated by the AMN.

9. For the purpose of accessing the reserved area, AMN requires the attribution of access codes to users, sending an updated list of email addresses to the IRN, IP, for archiving.

10. The IRN sends the access passwords individually to the email address provided, and the access codes assigned to users

must be nominative, in order to allow immediate identification of the AMN service to which they correspond, and no more than one code per Captaincy or Maritime Delegation.

11. Whenever the authorized user no longer has the competence or attribution to enter the necessary data and consult the information made available in the respective file, AMN must immediately communicate this fact to the IRN, I.P., requesting the replacement of the previous password (cf. Clause 3.a).

12. Pursuant to Clause 7 of the protocol, the IRN and the AMN observe the legal provisions contained in the RGPD and Law No. 58/2019, of August 8, namely with regard to respecting the purpose for which it was authorized to consultation, not using the information for other purposes; not to transmit the information to third parties; to take the necessary security measures to guarantee the integrity and proper functioning of the database.

13. As the entity authorized to access the information referred to in Clause 6.a, AMN is solely responsible for accessing the information and for its subsequent use (cf. No. 7 Clause 3.a).

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14. The data entered are kept for the time strictly necessary and as long as interoperability between all computer systems and the SNEM is not possible, as provided for in paragraph 5 of article 5 of Decree-Law no. 43/2018.

15. Decree-Law No. 43/201 Serialized the SNEM, establishing the conditions for its operation and access, establishing a single national data system, which contains information relating to ships, vessels and seafarers, establishing the principle of single interlocutor through the use of Bmar.

16. In turn, Decree-Law No. 93/2018 established the legal regime for the recreational boating activity, with the AMN responsible for registering the ownership of the ERs, and the IRN for registering all other facts relating to the RE which, under the terms of article 10 of the same diploma, are subject to registration, the registration being carried out using the information from the RE contained in the SNEM, and the registration services of the IRN must make available, after drawing up the respective records, the information in the SNEM (cf. article 5, paragraphs 2 to 4);

17. However, as the referred systems - SNEM and BMAR - are not fully developed and implemented, it becomes necessary to stipulate the exchange of possible information and considered relevant, between the AMN and the registration services, while

the referred systems are not are fully operational.

18. Thus, this protocol regulates the procedures aimed at ensuring the availability to the AMN of information regarding the existence of registration and registration of encumbrances or charges levied on ships and vessels, through the sharing of information under the terms of Decree-Laws n. 43/2018 and 93/2018.

19. To that extent, it is considered that there is a legitimacy basis for this data processing, in the form of access, pursuant to article 6(e) of the RGD.

20. The object of this protocol is the definition of procedures to ensure the availability of information regarding the existence of registration and registration of encumbrances or charges that affect ships and vessels to the AMN (cf. no. 1 of Clause 1.a) , so the provisions of paragraphs 3 and 4 of the same Clause are not understood.

21. Indeed, if the IRN is providing access to the information it has regarding the records within its competence to the AMN, it is not understood at what moment and for what purpose the AMN would introduce data and how it could assume the quality of responsibility for this data processing.

22. Under the terms of paragraph 4 of Clause 1.a of the Protocol, the INR and AMN are responsible for processing the data entered on the Platform, within the scope of their attributions. According to article 4(7) of the GDPR, data controller is understood as “the natural or legal person, public authority, agency or other body, which individually or jointly with others determines the purposes and the

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means of processing personal data; where the purposes and means of such processing are determined by Union or Member

State law, the controller or the specific criteria applicable to its appointment may be provided for by Union or Member State law.”

23. However, from the analysis of the protocol it follows that the IRN will be responsible for the processing of data resulting from the creation of a database provided for in paragraph 1 of Clause 2 of the Protocol, which has as its sole purpose the provision of this information to AMN.

24. It should be noted that the purpose of the information to be made available is to organize and keep the register of recreational craft up to date, with a view to promoting the registration of ownership or the cancellation of the vessel registration, pursuant to the provisions of articles 72. ° and 80 of the General Regulation of Captaincies, approved by Decree-Law No. 265/72, of July 31st, last amended by Decree-Law No. 92/2018, of November 13th (cf. No. 1 of Clause 5.3)¹ *.

25. It should also be noted that, both in paragraph 2 of Clause 5.a, and in Clause 6.a (under the heading Available information) regulates, respectively, the retention period of the inserted information and establishes a list of information to be collected for automated processing. It is not indicated by whom it is intended that this information be collected, where it is registered and, bearing in mind the object of this protocol, to what extent this collection and automated processing is related to the provision of information to AMN.

26. In Clause 3.a of the project, it is mentioned that the control of access to information is carried out through the use of access codes, composed of the email box identification and password, assigned by the IRN. for each Captaincy or Maritime Delegation to be indicated by AMN. The CNPD understands that such a solution must be complemented with the unique identification of each individual user who accesses the information, in order to be able to identify who performs the accesses, what are the search parameters and the type of result of that access. Thus, the assignment of non-transferable access codes to each individual user must be included in the text of the protocol, and the AMN must previously send the IRN an updated list with the identification and addresses of the individual users' email boxes.

27. In turn, the Protocol does not provide for the existence of logs, nor the respective conservation periods, for audit purposes, so it is considered necessary to provide for them in the article under analysis. Thus, the text of the protocol must contain that the accesses of individual users are registered, always allowing the IRN to know exactly who, individually, when and what personal data has been accessed. It is necessary that

1 «National vessels, with the exception of those belonging to the Navy, are obligatorily subject to registration of ownership,

abbreviated as registration, so that they can carry out the activity that determines their classification'.

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these records contain the date and time, origin, username and operation parameters (totals in searches, partials in creations/alterations, type of access result).

28. As security measures to be adopted, it is also suggested to study the possibility of using a virtual private network (VPN) to reinforce the security of the information being processed.

29. Finally, with regard to the processing of personal data that is intended to be regulated in Clause 7.a, it is important to clarify which conditions must be observed by the AMN, considering that the security obligations must be ensured by the IRN, as responsible for the processing of personal data.

III. Conclusion

30. The CNPD considers that there is legitimacy for the National Maritime Authority to have access to information regarding the existence of registration and registration of charges or charges levied on ships and vessels, within the limits and conditions set forth in this protocol, with the amendments resulting from this opinion .

Thus, the CNPD recommends:

The. The elimination of paragraph 3 of Clause 1,a;

B. The amendment of paragraph 4 of Clause 1, in order to indicate the IRN, IP, as responsible for data processing;

w. 0 addition to Clause 3.a of an item that provides for the attribution of access codes, non-transferable, to each individual user, with AMN previously sending to the IRN an updated list with the identification and email addresses of the users;

d. The provision in the clauses of the mandatory audit records of all operations carried out, namely the accesses of individual users and the indication of the conservation periods of these audit records;

It is. The clarification of Clause 6.a and paragraph 2 of Clause 5.a, rules that are out of scope in a protocol whose sole purpose is that the IRN make available to the AMN information regarding the existence of registration and registration of charges or

charges that apply to ships and vessels.

Approved at the meeting on December 21, 2022

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