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g NATIONAL COMMISSION ON DATA PROTECTION

OPINION/2020/92

I. Order

The Secretary of State for the Presidency of the Council of Ministers asked the National Data Protection Commission (CNPd) to issue an opinion on the Draft Decree-Law No. -Law no. 163/2015, of 17 August, which creates the sanctioning regimes applicable to the legal regimes of the single European sky, contained in Regulations (EC) no. 549/2004, 550/2004, 551/2004 and 552 /2004 of the European Parliament and of the Council of 10 March 2004, as amended by Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 and Regulation (EU) 2015/ 340 of the Commission of 20 February 2015, which sets out the technical requirements and administrative procedures for air traffic controllers' licenses and certificates.”

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, no. Article 4(2) and Article 6(1)(a), all from 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 in question amends Decree-Law no. personal data, refer to or presuppose them - see, for example, subparagraphs y), w), cc), dd), e) and ff), of paragraph 1 of article 16 and subparagraph e) of no. 2 of article 18, both of Decree-Law no. 163/2015, of 17 August, in the new projected wording.

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In fact, it provides for sanctioning the breach of duties whose fulfillment involves processing of personal data, which are

provided for in the European Union Regulations on which the issuance of the two national legal diplomas is based, in particular, Regulation (EU) 2015/340 of the Commission of 20 February 2015, Regulation (EU) 2018/1139 of the European Parliament and of the Council of 22 August 2018 and Implementing Regulation (EU) 2017/373 of 1 March 2017.

Only the introduction of article 18-A in Decree-Law No. 163/2015 stands out. Paragraph 2 of this article stems from the obligation imposed on air traffic control service providers, by the aforementioned Implementing Regulation, to control the consumption of psychoactive substances by air traffic controllers - referred to, moreover, in paragraph e) of paragraph 2 of article 18 of the Decree-Law in the new projected wording.

The Implementing Regulation, in Annex IV (standard ATS.OR.305), determines that service providers must adopt and apply a procedure for detecting cases of problematic use of such substances that complies with European rules for the protection of personal data, This procedure 'must be approved by the competent authority'. The solution by the national legislator of, in addition to providing the National Civil Aviation Authority as the competent authority for this approval, to create the obligation of prior consultation with the Authority for Working Conditions and the CNPD appears to be adequate, taking into account the attributions of these two entities and the sensitivity of the personal data being processed.

### III. Conclusion

On the grounds set out above, the CNPD understands that this Project does not raise reservations from the perspective of the protection of personal data.

Lisbon, August 4, 2020

Filipa Calvão (President, who reported)