

CKjnpv

y mu" vzZy National Data Protection Commission

OPINION/2022/116

I. Request

1. The Directorate-General for European Affairs of the Ministry of Foreign Affairs requested the National Data Protection Commission (CNPd) to issue an opinion on an Agreement for mutual recognition and exchange of driving licenses between the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland.
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. appreciation

3. The Agreement under analysis aims to regulate the mutual recognition and exchange of driving licenses between the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland (hereinafter Parties).
4. Pursuant to Article 3, the Parties undertake to recognize, in their territory, valid driving licenses, issued by the competent authorities of the other Party, to non-resident, resident or student drivers.
5. When a UK driving license holder resides in Portugal or when a Portuguese driving license holder legally resides in the UK and needs to exchange his driving licence, the exchange will be carried out in accordance with the legislation internally applied in each State. The laws of that State will apply to that driving licence.
6. In Portugal, the Highway Code, approved in Annex to Decree-Law No. 114/94, of May 3rd, in its current wording, was amended by Decree-Law No. 46/2022, of July 12th , driving licenses from OECD and CPLP countries are now accepted, for the purposes of driving in the national territory, provided that the cumulative requirements listed in article 125(1)(c) are

observed. Among these requirements, it is required that the issuing State is a signatory to the Geneva International Convention, of September 19, 1949, on road traffic or the Vienna International Convention, of November 8, 1968, on road traffic, which in the case occurs, or a bilateral agreement with the Portuguese State.

Av.D. Carlos 1,134,1° 1200-651 Lisbon

T (+351) 213 928 400

F (+351) 213 976 832

geral@cnpd.pt

www.cnpd.pt

PAR/2022/59

1v.

7. As for the exchange of driving licences, article 125 of the Highway Code, now amended, provides that the same is conditioned to the holder's compliance with the requirements set out in the Regulation of Legal Qualification to Drive approved by Decree-Law n. 138/2021, of June 5, with waiver of exam tests for the aforementioned titles, among other specificities (cfr. subparagraphs a) to c) of paragraph 2 of article 128 of the Highway Code).

8. Article 5 of the Agreement sets out the conditions for exchanging a driving licence, listing the requirements that the license holder must meet with the authorities of the Party where they reside.

9. Among the requirements to be complied with, paragraph d) of paragraph 1 of article 5 provides for the submission of a certificate of authenticity of the driving license from the issuing authority or to provide online verification by means of an access code to [iveòs /fe/platform](#) of the issuing authority or by means of notification between the Parties by email.

10. The text of the Agreement is silent as to the procedure to be observed and the security measures to be adopted for accessing information or for communicating information by email. The CNPD recommends expanding this article in order to expressly enshrine these measures in compliance with the provisions of article 5(1)(f) and article 32 of the RGPD and the UK GDPR.

11. In turn, Article 9, relating to international data transfers, provides that, when there is a transfer of personal data, this is carried out in accordance with the international transfer rules of each Party.

12. As is clear from article 7 of the text under analysis, the execution of this Agreement presupposes the transfer of personal

data from one to another of the Member States through the competent authorities of the United Kingdom and Portuguese, that is, in Great-Brittany, the Secretary of State for Transport through the Driver and Vehicle Agency and in Northern Ireland the Department for Infrastructure acting through the Driver and Vehicle Agency, in Portugal, the Instituto da Mobilidade e dos Transportes, I.P. (cf. Article 10).

13. Transfers of personal data to third countries or international organizations can only be carried out if there is an adequacy decision under the GDPR or, in the absence of an adequacy decision, if the controller or processor has provided adequate guarantees under the terms of Article 46 of the GDPR. In the absence of an adequacy decision or adequate guarantees, a transfer can only be carried out on the basis of the exceptions set out in Article 49 of the GDPR.

PAR/2022/59

two

National Data Protection Commission

14. The United Kingdom's regime relating to international transfers of personal data is set out in Articles 44 to 49 of the UK GDPR, completed by the Data Protection Act 2018, and is materially identical to the rules laid down in Chapter V of the GDPR

15. Pursuant to Commission Implementing Regulation (EU) 2021/1772 of 28 June 2021, the European Commission has undertaken a careful review of UK law and practice and has concluded that the UK ensures a level of adequate protection of personal data transferred, within the scope of the GDPR, from the European Union to the United Kingdom, which is why the reference to the respective regimes on international transfers is sufficient to ensure adequate protection of personal data.

III. Conclusion

16. Under the terms and on the grounds set out, the CNPD understands that there is no impediment to the conclusion of the Agreement in question, recommending, even so, the elaboration of article 5 with the provision of adequate security measures for the transmission of personal data by email .

Approved at the meeting of December 21, 2022

filipa Calvão (President)

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