

National Data Protection Commission

OPINION/2022/119

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 Swiss Confederation .

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, Article 4(2) and Article 6(1)(a), all of Law No. 58/2019, of August 8 , which implements the GDPR in the internal legal order.

II. appreciation

3. The Agreement under analysis aims to establish the mutual recognition and exchange of driving licenses between the Portuguese Republic and the Swiss Confederation (hereinafter Parties).

4. Pursuant to Article 3, driving licenses recognized by the Parties permit driving for 185 days after entering the territory of the other Party before the driver establishes residence, and must be exchanged within 90 days after obtaining residence .

5. When exchanging the driving licence, the driver must be recognized with all the equivalent categories contained in his licence, if he has passed the tests for access to these categories in the Swiss Confederation, in the Portuguese Republic or in a Member State of the European Union .

6. The Parties exchange driving licenses with the other Party without the need to take exams for all categories obtained by an exam carried out in the territory of one of the Parties.

7. 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 1,134,1o T (+351) 213 928 400 geral@cnpd.pt

1200-551 Lisboa F (+351) 213 976 832 www.cnpd.pt

PAR/2022/93

1v.

8. 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 5 June, with waiver of exam tests for the above-mentioned titles, among other specificities (cfr. subparagraphs a) to c) of paragraph 2 of article 128 of the Highway Code).

9. Article 4 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.

10. Among the requirements to be complied with, paragraph d) of paragraph 1 of article 4 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 weòs /fe/platform of the issuing authority or by means of notification between the Parties by email.

11. 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 the expansion of 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.

12. In turn, article 8, relating to international data transfers, provides that, when there is a transfer of personal data, such transfers will be carried out in accordance with the international transfer rules of each Party.

13. As clearly appears from article 6 of the text under analysis, the execution of this Agreement presupposes the transfer of personal data from one State Party to another, through the competent entities of the Swiss and Portuguese Confederation, in the latter case, the Mobility and Transport Institute, I.P. (cf. Article 9).

14. 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.

15. Pursuant to the Commission Decision of 26 July 2000, issued pursuant to Directive 95/46/EC of the European Parliament and of the Council, and concerning the adequate level of protection of personal data in Switzerland, it is considered that Switzerland offers an adequate level of protection for personal data transferred from

PAR/2022/93

two

National Data Protection Commission

European Union. It appears, therefore, that the Swiss Confederation benefits from an adequacy decision, which, despite having been adopted by the Commission under the terms of Directive 95/46/EC, remains in force as provided for in Article 5(5). 46 of the GDPR, 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 above, the CNPD understands that there is no impediment to the conclusion of the Agreement under review, recommending, even so, the expansion of article 4 with the provision of adequate security measures for the transmission of personal data by mail electronic.

Approved at the meeting on December 21, 2022

Filipa Calvao (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