

National Data Protection Commission

OPINION/2021/160

I. Order

1. The Directorate-General for Consular Affairs and Portuguese Communities of the Ministry of Foreign Affairs submitted to the National Data Protection Commission (CNPD), for an opinion, the text of the Agreement on Employment and Permanence of Moroccan Workers in the Portuguese Republic (hereinafter referred to as Agreement), to be concluded between the Portuguese Republic and the Kingdom of Morocco.

2. The CNPD issues this opinion within the scope of its attributions and powers, as the national authority to control the processing of personal data, in accordance with the provisions of 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 - GDPR), in conjunction with the provisions of article 3, in paragraph 2 of article 4 and in subparagraph a) of paragraph 1 of article 6, all of Law no. ensure the implementation, in the domestic legal order, of the GDPR).

II. Analysis

3. The purpose of the Agreement under analysis is, as set out in Article 1, the definition of admission and stay procedures applicable to Moroccan citizens for the exercise of a salaried professional activity in the Portuguese Republic.

4. The process of recruiting Moroccan workers is carried out jointly by the Government of the Portuguese Republic and the Kingdom of Morocco.

5. For this purpose, the Portuguese authorities, through the Portuguese Embassy in Rabat, communicate labor needs and job offers, and the Moroccan authorities owe the Ministère de l'Inclusion Economique, de la Petite Entreprise, de l'Emploi et des Compétences which, in the same way, transmits to the Portuguese authorities the details of candidates for these jobs.

6. As mentioned in OPINION/2020/136, November 10, 2020 - through which the CNPD had the opportunity to comment on the previous version of this Agreement under the terms of article 46 of the GDPR, the Portuguese Republic can only carry out

transfers of personal data to a third country located outside the European Union, such as the Kingdom of Morocco, if that country has adequate guarantees and on condition that the data subjects enjoy enforceable rights and effective corrective measures.

1 Accessible at <https://www.cnpd.pt/decisoes/historico-de-decisoes/?year=202Q&tvoe=4&ent=>

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7. Although the Kingdom of Morocco does not benefit from an adequacy decision from the European Commission, under the terms of Article 45 of the GDPR, nor is it a signatory to Convention 108 of the Council of Europe, the CNPD understood in the aforementioned opinion, which, taking into account that the Kingdom of Morocco has specific data protection legislation and that a National Authority has been established with supervisory powers in this area, which works with the Prime Minister, the appropriate guarantees were met for the international transfer of data, in accordance with article 46 of the GDPR, however, care must be taken:

The. That the Agreement includes the categories of data being processed, by reference to the category of data subjects;

B. The reference that the data cannot be processed for other purposes or, at least, for purposes incompatible with those of collection without the prior consent of the other Party; and

ç. The normative provision for the recognition of the right to judicial protection of data subjects to guarantee their rights to data protection.

8. From the recommendations made by the CNPD, it appears that only the one referring to the identification of data categories was incorporated in the text now received (Article 5(9)), so, based on the grounds presented in the Opinion/ 2021/136, regarding other aspects, the previously formulated observations are maintained.

### III. Conclusion

9. In view of the foregoing, the CNPD reiterates that, in order for adequate guarantees to be met for the international transfer of data in accordance with article 46 of the GDPR, the Agreement must include rules that provide, on the one hand, that the data

cannot be processed for other purposes or, at least, for incompatible purposes, and subject to the prior authorization of the other party; on the other hand, that the right to judicial protection be recognized to defend the rights related to the protection of personal data.

Approved at the meeting of December 21, 2021

Filipa Calvão (President)