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CNPD

National Data Protection Commission

OPINION/2021/133

I. Order

1. The Diplomatic Institute of the Ministry of Foreign Affairs submitted to the National Data Protection Commission (hereinafter CNPD), for opinion, the draft Ordinance that aims to create and regulate the Curricular Internship Program of the Ministry of Foreign Affairs (PECMNE).

2. The CNPD issues an opinion within the scope of its attributions and competences as an independent administrative authority with powers of authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57, in conjunction with subparagraph b) of paragraph 3 of article 58, and with paragraph 4 of article 36, all of Regulation (EU) 2016/679, of 27 April 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 n° 58 /2019, of 8 August, which enforces the GDPR in the domestic legal order.

3. Decree-Law No. 66/2011, of 1 June, defines the rules that must be followed when carrying out professional internships. However, subparagraph a) of paragraph 2 of article 1 excludes from the scope of application of this legal diploma curricular internships, which therefore lack regulations that frame their concrete realization.

4. Pursuant to Article 14(1)(b) of Regulatory Decree No. 10/2012, of 19 January, and Order No. 14598/2012-GSG, of 5 November, it is up to the Diplomatic Institute (IDI) to manage these curricular internships at the Ministry of Foreign Affairs.

5. Thus, the draft Ordinance creates the Curricular Internship Program at the Ministry of Foreign Affairs whose Regulations are included in Annex I, which establishes the rules for the recruitment and selection of candidates and defines the general principles and operating rules of curricular internships in the internal and external services of the MNE.

6. Article 6 of Annex I regulates the submission of applications to MNE curricular internships, providing that the application is submitted electronically by filling in the Online application form, available on the PCMNE website, at <https://>

www.pec.gov.pt/default.aspx.

7. At the time of application, for the purpose of monitoring the procedure, each candidate is assigned an access login. At this point, it is important to remember that the login must consist of a pair of user (assigned by the system) and password (chosen by the owner).

II. Analysis

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8. In the application form, the candidate must fill in personal data, including full name, date of birth, district and county of residence, telephone contact, e-mail address, nationality(ies) of which he is the holder and NIF (Number of Tax Identification), and attach document proving academic qualifications and mastery of languages, updated curriculum vitae (CV), document proving enrollment in higher education upon submission of a college identification card or proof of enrollment. - cf. paragraph 3 of article 6 of Annex I. The processing of this personal data is appropriate and necessary for the purpose of recruiting and selecting candidates for a curricular internship, in compliance with the principle of data minimization enshrined in subparagraph c) of paragraph 1 of article 5 of the RGPD, with the exception of the NIF data, for which there is no need for its treatment in the selection and recruitment phase of trainees.

9. In turn, paragraph 5 of article 6 provides that candidates may authorize the sharing of their personal data and CV so that their application can be considered for filling other internship vacancies. It should be noted that Article 8(7) provides that in the event that all vacancies are not filled, a second vacancy filling procedure will take place only for candidates who have accepted the sharing of application data and who have not been placed in the first procedure. Likewise, Annex II concerns the declaration of consent of data subjects for the collection, processing and transmission to third parties involved in the

operationalization¹ of the applications. However, as the transmission of candidates' personal data to third parties is not at issue, but only the application for other internship vacancies at the same institution, and since the purpose of data processing is the same, it is suggested to eliminate these provisions, for it does not appear that, for this purpose, an autonomous consent is necessary.

10. Under the terms of paragraph 1 of article 8, after the deadline for submitting applications, the IDI sends, within 5 days, to the internship supervisor(s) of each service an electronic communication with the application of all candidates who have expressed an interest in the internship vacancy in the service in question.

11. It should be noted that, if all applicants' data are sent by e-mail, security measures such as encryption with a password and sending the password by an alternative means must be foreseen. Therefore, it is recommended that this item be reformulated in order to indicate the security measures to be adopted in compliance with the principle of data integrity and confidentiality enshrined in Article 5(1)(f) of the GDPR.

¹ The analysis of Annex II appears in points 18 to 24.

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12. On the other hand, Article 8(4) provides that the IDI publishes a placement list on the MNE's institutional website, taking into account the preferences of candidates and the order of services. It should be noted that the item does not define which data will be included in the aforementioned list, therefore, taking into account the principle of transparency provided for in subparagraph a) of paragraph 1 of article 5 of the RGPD, its densification is suggested, listing the personal data that constitute it.

13. The curricular internships are formalized through the conclusion of a tripartite internship protocol, to be concluded between the student, the higher education institution and the MNE, which includes the complete identification of the parties, the identification of the internship supervisor in the MNE and of the professor in charge of the higher education institution.

14. Pursuant to article 13, the internship supervisor prepares an internship plan and, at the end of it, proceeds with an

evaluation of the intern, which includes a brief function of the functions performed and the fulfillment of the internship objectives, complemented with a quantitative assessment , the same being communicated to the intern and the IDI. The intern must prepare an internship report and send it to the IDI, which will attach it to their individual file.

15. In view of the various data processing identified above, it should be noted that the Project does not contain the necessary information on security measures to be adopted in order to comply with the provisions of paragraph 1 f) of article 5 of the GDPR, nor on data retention periods, as follows from the principle of limitation of data retention provided for in subparagraph e) of paragraph 1 of the same article.

16. Therefore, it is recommended to introduce an item that expressly enshrines the missing information in order to observe the above mentioned principles regarding the processing of personal data.

17. Finally, ANNEX II, entitled 'Consent to collect data - PECMNE electronic platform', concerns the consent of the data subject, pursuant to Article 6(1)(a) of the GDPR . Thus, the candidate must indicate that he consents to the collection of his personal data under the terms of the RGPD, after being provided with the following information: "In compliance with the RGPD, it is informed that the personal data requested in the registration on the PEC-MNE platform their purpose is the recruitment, selection and placement in the internal and external services of the MNE. For this purpose, candidates consent to the collection of their personal data, their processing and transmission to third parties involved in the process of operationalization of the same. At any time, the rights of access and opposition to the processing of data can be exercised under the terms of the legislation in force, and the interested party must, in this case, delete the user registration».

18. Note that the consent to be valid must be translated into a free, specific, informed and unequivocal declaration of will, by which the data subject accepts, by means of a positive declaration or act.

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unequivocally, that the personal data concerning you are the object of processing - point 11) of article 4 of the GDPR.

19. Thus, in order for consent to be informed, the controller must provide the data subject with at least information on the identity of the controller, the purpose of each of the processing operations, the data to be processed or categories of data personal data being processed, the existence of the right to withdraw consent at any time² (cf. paragraph 3 of article 7 of the GDPR) and information about the use of data for automated decisions, if applicable (paragraph c) of paragraph Article 22(2) GDPR).

20. It should be noted that the controller who invokes the consent of the data subjects must also comply with the information duties contained in article 13 of the GDPR. Thus, the fulfillment of reporting duties and the fulfillment of the informed consent requirement can be done separately or lead to an integrated approach as appears to result from the analysis of Project³.

21. Thus, in order to substantiate the data subjects' right to information provided for in article 13 of the RGPD, the text should also contain information regarding the legal basis of the treatment, the data retention period, the rights of the data subjects. of data, in particular the right to request from the controller access to personal data concerning him, as well as its rectification or erasure, the limitation of treatment, and the right to submit a complaint to a supervisory authority, contacts and form of complaint.

22. Thus, in order to contribute to the transparency of the processing of personal data, the CNPD recommends the reformulation of Annex II in order to contain all the information referred to above, and not just that relating to the purpose of the treatment and the right of access invoked. In the project. And, in line with what was mentioned above, in point 9, it reinforces the desirability of eliminating the reference to "and transmission to third parties involved in the process of operationalization of the same."

23. A note on the right of opposition referred to in Annex II. Pursuant to article 21 of the GDPR, the data subject has the right to oppose the processing of personal data concerning him/her when it is carried out on the basis of article 6(1)(e) and f), or in paragraph 4 of article 6, which is not the case in the present case. It is therefore recommended to delete it.

² See Guidelines 05/2020 on consent within the meaning of Regulation 2016/679 of the European Data Protection Board available in Guidelines 05/2020 on consent under Regulation 2016/679 | European Data Protection Board eudpa.eu

³ In this regard, see point 72 of the aforementioned Guidelines.

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III. Conclusion

24. Thus, on the grounds set out above, the CNPD recommends:

- a) The deletion of paragraph 5 of article 6 and paragraph 7 of article 8 of the Project as the communication of data to third parties as described above is not involved;
- b) The indication in paragraph 1 of article 8 of security measures to be adopted in relation to the electronic communication provided for therein, in compliance with the principle of data integrity and confidentiality;
- c) The densification of paragraph 4 of article 8, listing the personal data that make up the list for placement of trainees;
- d) The introduction of an item that expressly provides for security measures to be adopted and data retention periods; and
- e) The reformulation of Annex II in order to substantiate the data subjects' right to information, and eliminating the reference to the authorization for the transmission to third parties involved in the operationalization process of the same, as well as the right of opposition .

Approved at the meeting of October 6, 2021

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