

## **DECREE 48/2003, of 20th february, passing the statute of the Catalan Data Protection Authority**

*(Non official translation)*

*(Updated to 20.07.2018)*

By virtue of Act 5/2002, of 19<sup>th</sup> April, the Catalan Data Protection Authority authority has been created with the object of safeguarding the fundamental rights and public freedoms of citizens in everything to do with operations carried out using automated or manual processing of personal data.

The Catalan Data Protection Authority is a public institution with its own legal personality and with full legal capacity to carry out legal acts, which exercises its authority of control over the processing of personal data carried out by the Generalitat, by the entities that make up the local Administration and by the universities in the territorial area of Catalonia, by the bodies and autonomous entities that depend on the Administration of the Generalitat or the local entities and consortia of which they form part.

By virtue of the authorization contained in the first final provision of the aforesaid Act 5/2002, of 19<sup>th</sup> April, the Statute of the Authority is passed by this Decree.

The Statute has five chapters. Chapter I contains the general provisions under which the Catalan Data Protection Authority's nature as an independent authority is established. The competences and functions of the Authority are elaborated on in Chapter II, and Chapter III regulates the relations with affected parties and collaboration with other entities, in accordance with the provisions of Act 5/2002, creating the Data Protection Authority. The economic and property system, the personnel system and the determination of the governing bodies of the Authority are established in Chapters IV and V, in accordance with the nature as a public institution granted to the Authority in the aforesaid act creating it.

In accordance with the report of the Legal Advisory Commission, at the proposal of the Minister of Governance and Institutional Relations and in accordance with the Government,

**I DECREE:**

Sole article

The Statute of the Catalan Data Protection Authority, attached as an Appendix to this Decree, is hereby passed.

**FINAL PROVISIONS**

One

The Data Protection Advisory Council shall be set up within one month after this Decree comes into effect.

Two

This Decree shall come into effect the day after it is published in the Official Gazette of the Generalitat of Catalonia.

Barcelona, 20<sup>th</sup> February of 2003

JORDI PUJOL

President of the Generalitat of Catalonia

JOSEP MARIA PELEGRÍ I AIXUT

Minister of Governance

and Institutional Relations

**APPENDIX**

**Chapter I**

***General provisions***

Article 1

## *The Catalan Data Protection Authority*

1.1 The Catalan Data Protection Authority, created by article 1 of Act 5/2002, of 19<sup>th</sup> April, is a public institution the activity of which is in accordance with the public legal system.

1.2 The Catalan Data Protection Authority is set up as an independent authority that acts objectively and with complete independence of the public authorities in exercising its functions and liaises with the Government through the Department of Governance and Institutional Relations.

1.3 The Catalan Data Protection Authority has its own legal personality and full legal capacity to carry out legal acts in order to achieve its purposes.

## Article 2

### *Scope*

The Catalan Data Protection Authority exercises its authority of control over the processing of personal data referred to in article 3 of Act 5/2002, of 19<sup>th</sup> April.

## Article 3

### *Legal system*

3.1 The Catalan Data Protection Authority is governed by Act 5/2002, of 19<sup>th</sup> April, by this Statute and by the Organic Act 15/1999, of 13<sup>th</sup> December, on the Protection of Personal Data. In exercising the public functions attributed to it, it is subject to Act 30/1992, of 26<sup>th</sup> November on the legal system of public authorities and the common administrative procedure, and to Act 13/1989, of 14<sup>th</sup> December, of organization, procedure and legal system of the Administration of the Generalitat of Catalonia.

3.2 The operation of the bodies and the technical, legal, administrative and economic services of the Authority are governed by the provisions set forth in this Statute.

## **Chapter II**

### ***Competences and functions***

## Article 4

### *Competences of the Authority*

The scope of the powers of the Catalan Data Protection Authority include the competences of registration, control, inspection, sanction and resolution and also the adoption of proposals and instructions.

## Article 5

### *Functions of the Authority*

5.1 The Catalan Data Protection Authority exercises the functions set forth in article 5 of Act 5/2002, of 19<sup>th</sup> April.

5.2 In order to exercise these functions, the Catalan Data Protection Authority through its director or the body it delegates may directly address the controllers and processors of any of the personal data filing systems included within its scope of action.

## **Chapter III**

### ***Relations and collaboration***

## Article 6

### *Relations with affected parties*

6.1 The Catalan Data Protection Authority shall inform persons of the rights the Act recognizes in their favour in relation to the processing of personal data. For these purposes, it may carry out information campaigns.

6.2 The Authority shall deal with the requests submitted to it by affected persons and shall reply thereto, notwithstanding any appeals that may be lodged.

## Article 7

### *Collaboration with other entities*

7.1 The Catalan Data Protection Authority shall collaborate with the Catalan Ombudsman (*Síndic de Greuges*) and with the State Data Protection Authority and other institutions and bodies that defend the rights of individuals.

7.2 For these purposes, the Authority may sign collaboration agreements with such entities.

## Article 8

### *Cooperation in legislative development*

8.1 The Catalan Data Protection Authority will collaborate with the competent bodies in the regulatory development and application of regulations that affect its area of competence.

8.2 For the purposes of the preceding section, the Authority shall be responsible for:

a) Issuing a compulsory report on bills of general provisions issued to elaborate on Act 5/2002, of 19<sup>th</sup> April, of the Catalan Data Protection Authority.

b) Issuing instructions and recommendations to bring the processing of personal data into line with the principles of ruling legislation on personal data protection.

## **Chapter IV**

### ***Personnel, economic and property system***

#### Article 9

##### *Personnel system*

9.1 The Catalan Data Protection Authority shall approve the list of posts which shall include:

a) Posts to be carried out by civil service personnel, which shall necessarily include posts that entail exercising public powers. Posts that entail exercising legal advisory functions, judicial representation and defence are restricted to civil servants that belong to the Corps of Attorneys of the Generalitat of Catalonia.

b) Posts to be carried out by personnel subject to labour law, specifying the factors which, in accordance with the tasks of each post, determine the impossibility of being carried out by civil service personnel.

9.2 Posts restricted to civil service personnel shall be filled in accordance with the terms of legislation on the civil service. Posts restricted to personnel subject to labour law shall be filled by public notice in accordance with the principles of equality, merit and capacity.

#### Article 10

##### *Economic system*

10.1 The Catalan Data Protection Authority has the following resources:

a) The amounts assigned each year in the budgets of the Generalitat.

- b) Any grants and contributions awarded to it.
- c) The product and return on the assets and rights that make up its property.
- d) The ordinary and extraordinary income obtained on exercising its activities.
- e) Any others attributed to it.

10.2 The Catalan Data Protection Authority shall keep its accounts in accordance with the public accounting system.

10.3 The financial control of the Authority shall be carried out by the General Public Accounts Department of the Generalitat.

## Article 11

### *Budget*

The Catalan Data Protection Authority shall draw up and approve its preliminary budget project each year which shall be processed by the Government, through the Department of Governance and Institutional Relations, to be included, in a specific section, in the budget of the Generalitat.

## Article 12

### *Property and contracting system*

12.1 The Catalan Data Protection Authority has its own property made up of the assets and rights it acquires or which are donated or assigned to it by any person or entity. The property system is as established for the property of the Administration of the Generalitat.

12.2 The legal contracting system of the Authority is as established in ruling legislation on contracts of public authorities.

The contracting body shall be the director, who may delegate his or her powers on the general secretary for the award and formalization of minor contracts for consulting, assistance and services.

## **Chapter V**

### ***Governing bodies of the Authority***

## Article 13

### *Governing bodies*

The Catalan Data Protection Authority has the following bodies:

- a) The director of the Authority.
- b) The Data Protection Advisory Council of Catalonia.

## Article 14

### *The director of the Authority*

14.1 The director of the Catalan Data Protection Authority directs the Authority and exercises legal representation thereof. He or she shall carry out these functions with complete independence, neutrality and objectivity, and shall not be subject to any mandatory instructions whatsoever. Nonetheless he or she shall listen to the proposals made by the Advisory Council and in the event that he or she does not take them into account must give grounds for doing so.

14.2 The appointment, removal from post, remuneration and system of incompatibilities of the director are governed by the provisions of article 13 of Act 5/2002, of 19<sup>th</sup> April.

14.3 The resolutions of the director of the Catalan Data Protection Authority are the last instance in administrative channels and may be the object of a contentious administrative appeal.

14.4 The director of the Authority shall appear before Parliament each year to report on its actions.

## Article 15

### *Functions of the director*

15.1 It is the responsibility of the Director of the Authority to issue resolutions or instructions and approve the recommendations and opinions that require the exercise of the functions of the Authority, particularly:

- a) <sup>1</sup>
- b) To rule, indicating the grounds, on the appropriateness or otherwise of the refusal of the rights of objection, access, rectification or cancellation, in accordance with the terms of article 7.2 of Act 5/2002, of 19<sup>th</sup> April.
- c) To require, in the terms established in article 5.1.d) of Act 5/2002, of 19<sup>th</sup> April, controllers and processors to adopt the necessary measures to ensure that the processing of personal data under investigation is in line with ruling legislation and order, if necessary, the cessation of processing and the cancellations of filing systems.

d) To adopt the measures, resolutions and instructions referred to in article 5.1.b) of Act 5/2002, of 19<sup>th</sup> April, to guarantee the conditions of security of the filing systems created for purely statistical purposes.

e) To issue the necessary instructions and recommendations to bring the processing of personal data into line with the principles of ruling legislation on personal data, in accordance with the provisions of article 5.1.c) of Act 5/2002, of 19<sup>th</sup> April.

f) To issue a compulsory report on the preliminary draft bills of law, bills of regulatory provisions drawn up by the Government by virtue of legislative delegation and the bills of regulations or provisions of a general nature that affect personal data protection. The reports shall be requested by the Government through the secretary of the Government, or by the competent Ministers by virtue of the subject matter. The reports must be issued within a maximum of fifteen working days after the entry date of the application.

g) To respond to the inquiries which the Administration of the Generalitat, local entities or the universities of Catalonia submit concerning the application of the personal data protection legislation. Any inquiries by the Administration of the Generalitat and the bodies and entities that depend on it shall be submitted through the competent Minister by virtue of the subject matter. Any inquiries submitted by the remaining institutions and bodies included in the scope of Act 5/2002 shall be submitted through the body that holds representation thereof. The replies shall be issued in a maximum of fifteen working days of the date the inquiry is registered. The director may extend this term to a month if the complexity of the opinion sought so requires.

h) To rule on the adoption of measures to correct the effects of breaches, in accordance with the provisions of article 16.2 of Act 5/2002, of 19<sup>th</sup> April.

i) To propose the commencement of disciplinary action against controllers or processors in accordance with ruling legislation on the disciplinary system of the public authorities.

j) To rule on the sanctionable cases that are of its competence and notify the State Data Protection Authority of alleged breaches, the sanctions for which are the responsibility of the latter.

k) To order the cessation of processing, of unlawful communication of data or the immobilization of filing systems, in the cases established in article 18 of Act 5/2002, of 19<sup>th</sup> April.

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<sup>1</sup> Paragraph repealed by the sole article of Decree 162/2018, of July 17, amending Decree 48/2003, of February 20,



l) To provide information on the rights of individuals in relation to the processing of personal data.

m) To deal with requests submitted by citizens.

n) To respond to inquiries submitted by the authorities.

15.2 The director of the Authority is also responsible for:

a) Awarding and formalizing any contracts required for the management of the Authority and ensuring compliance therewith and performance thereof.

b) Approving expenses and ordering payments, within the limits of the credits of the Authority's expense budgets.

c) To exercise economic and financial control over the Authority.

d) To draw up the preliminary budget of the Authority.

e) To propose the workforce of the Authority to the Advisory Council.

## Article 16

### *Management structure*

The following units depend on the director of the Authority:

a) General Secretariat.

b) Legal Advising Unit.

c) <sup>2</sup>

d) Inspection Unit.

## Article 17

### *General Secretariat*

The Secretary General shall exercise the following functions:

a) Manage the personal and material resources assigned to the Authority.

b) Undertake the economic and administrative management of the Authority's budget.

c) Keep an inventory of the goods and rights that make up the property of the Authority.

d) Create and keep up-to-date an archive of documentary resources on personal data protection.

e) Draw up the annual report.

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which approves the Statute of the Catalan Agency for Data Protection.

<sup>2</sup> Paragraph repealed by the sole article of Decree 162/2018, of July 17, amending Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency for Data Protection.

f) Organize conferences, seminars and other activities on personal data protection.

g) Manage the Authority's mechanized information systems.

## Article 18

### *Legal Advising Unit*

The Legal Advising Unit shall be responsible for giving the Authority legal advice and issuing the report on drafts bills of provisions issued to elaborate on the Act, bills of law or general provisions on personal data protection.

## Article 19

### *Data Protection Register Unit<sup>3</sup>*

## Article 20

### *Inspection and Technical Unit*

20.1 The Inspection Unit is responsible for the power of inspection attributed to the Catalan Data Protection Authority in article 8 of Act 5/2002.

20.2 Specifically, the Inspection Unit shall be responsible for exercising the following functions:

- a) Examine information that contains personal data.
- b) Examine hardware and software.
- c) Examine the systems of transmission of and access to data.
- d) Perform audits of the information systems.
- e) Request the presentation or processing of documents and data.
- f) Examine sanctionable cases.

20.3 The civil servants who exercise the inspecting function shall be deemed to be a public authority in the course of their activity and shall be obliged to keep the information that comes to their knowledge whilst exercising the inspection functions secret, even after they have ceased to carry out such functions.

20.4 To exercise their functions, the civil servants who exercise the power of inspection may have access to the premises where the hardware and software used are installed or where the documents and personal data are located.

## Article 21

### *Data Protection Advisory Council of Catalonia*

21.1 The Data Protection Advisory Council of Catalonia is made up of the members detailed in article 14.2 of Act 5/2002, who are appointed by the Minister of Governance and Institutional Relations at the proposal of the entities they represent.

21.2 The Chairman of the Advisory Council is appointed by the president of the Generalitat at the proposal of the Minister of Governance and Institutional Relations, from among three candidates presented by the Advisory Council from among its members.

21.3 The director of the Authority shall be present at the meetings of the Advisory Council and may speak but not vote thereat.

## Article 22

### *Functions of the Advisory Council*

The following are the functions of the Data Protection Advisory Council of Catalonia:

- a) Provide information on all matters submitted by the director of the Authority.
- b) Make proposals to the director of the Authority in relation to the exercise of its functions.
- c) Respond to the inquiries submitted to it.
- d) Establish criteria in relation to the processing of personal data.
- e) Carry out studies on personal data protection.
- f) Approve the workforce of the Authority.
- g) Approve the annual report of the Authority.

## Article 23

### *Working of the Advisory Council*

23.1 In all matters not covered by Act 5/2002 and this Statute, the Advisory Council shall be governed by the ruling provisions on the working of collegiate bodies.

23.2 A civil servant of the Catalan Data Protection Authority shall act as secretary of the Council.

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<sup>3</sup> Article repealed by the sole article of Decree 162/2018, of July 17, amending Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency for Data Protection.

23.3 The Advisory Council shall be called to meet by the Chairman at least once a quarter. It may also meet when the majority of its members so request.

23.4 Quorum of the Council requires the presence of the Chairman and the Secretary, or, as the case may be, three persons who substitute them, and half of its members.

23.5 The members of the Advisory Council may receive per diem expense allowances for attending meetings.

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