

Opinion in relation to the query raised by a supply company regarding the request for personal data of its subscribers by the Catalan Water Agency (ACA).

A letter from a water supply company (hereinafter, the company) is submitted to the Catalan Data Protection Authority, relating to a request for data that the Catalan Water Agency (ACA).

The consultation explains that the company is a company in the environmental sector that manages all the processes related to the integral cycle of water (catchment, potability, transport and distribution) for citizen consumption, among others, in several municipalities of Catalonia

The consultation states that the ACA would have formulated a "Requirement for tax information in relation to the water fee", based on the provisions of article 93 of Law 58/2003, of December 17, general tax, for which I would request from the company the following information from the subscribers:

"1. NIF of the subscriber; 2. Name of the subscriber; 3. Supply address; 4. Policy number; 5. Counter number; 6. UTM coordinates ETRS89 reference system".

Given the requirement of the ACA, the company asks if this Authority considers the requirement of "UTM coordinates ETRS89 reference system" lawful in application of the principles of proportionality, necessity and suitability established in the personal data protection regulations.

Analyzed the request, which is accompanied by a copy of the request for obtaining information that the ACA would have formulated, specifying the data requested, and the current applicable regulations, and having seen the report of the Legal Advice, the following is ruled:

I

(...)

II

The consultation states that the ACA would have requested, through the "Requirement for tax information in relation to the water fee", certain information in relation to the procedure for declaring and entering the water fee reflected by the supplying entities, specifically:

"1. NIF of the subscriber; 2. Name of the subscriber; 3. Supply address; 4. Policy number; 5. Counter number; 6. UTM coordinates ETRS89 reference system".

The ACA requirement states that:

"With reference to the detailed billing report, and in accordance with the current technical prescriptions, the identification of subscribers is carried out by means of the postal address, the policy number and the meter number. However, the geolocation of the supply point or the meter gives good complementary information in order to identify the subscriber subject to the water fee.

As long as this information is not used by the majority and is not incorporated into the technical prescriptions of the detailed invoicing report, it is necessary to open a tax information request procedure in order to have this information from the supply entities that already they have."

Given the request for information from the ACA, the company asks if this Authority considers the request for "UTM coordinates ETRS89 reference system" lawful in application of the principles of proportionality, necessity and suitability established in the regulations for the protection of personal data.

III

Based on the consultation in these terms, it is necessary to start from the basis that Organic Law 15/1999, of December 13, on the protection of personal data (LOPD) defines in its article 3.a) personal data as "any information relating to identified or identifiable natural persons".

For its part, the Regulations for the deployment of the LOPD (RLOPD), approved by Royal Decree 1720/2007, of December 21, specify, in its article 5.1.f), that personal data means "any numerical, alphabetical, graphic, photographic, acoustic or any other type of information that concerns identified or identifiable natural persons", considering as an identifiable person "any person whose identity can be determined, directly or indirectly, through any information referring to their physical, physiological, psychological, economic, cultural or social identity", as long as this identification does not require "disproportionate terms or activities" (article 5.1.o).

The query refers, specifically, to the communication of the data referred to the UTM coordinates (reference system ETRS89). This information would refer to a positioning system on the earth's surface, that is to say, a geolocation system that makes it possible to identify a certain point, in this case, by the information available, "the point of supply or of the meter".

The information referred to subscribers to the water supply service subject to the water fee, who are natural persons, must be considered personal information (art. 3.a) LOPD). With regard specifically to the geolocation data of a water supply meter, when it is linked directly or indirectly with other data of identified or identifiable natural persons (art. 5.1.o) RLOPD), for example, the name and surnames, or the NIF, must also be considered personal information subject to the principles and guarantees of the LOPD.

Therefore, the communication to the ACA of the coordinates of the subscribers' supply points, together with other data from the bill that identifies the users, is a communication of personal data and, as such, is protected by the principles and guarantees of the data protection regulations (LOPD, RLOPD, as well as Regulation (EU) 2016/679, of April 27, general data protection (RGPD), in force since May 25, 2016, and which will be applicable from May 25, 2018 (Article 99 RGPD).

The company making the inquiry is a water supply entity which, according to article 2.8 of the Consolidated Text of the legislation on water in Catalonia, approved by Legislative Decree 3/2003, of November 4 (in forward, DL 3/2003), is "the natural or legal person of any nature that, through networks or facilities of public or private ownership, supplies water at a low rate".

According to article 7.1 of DL 3/2003, the ACA is the authority that exercises the competences of the Generalitat of Catalonia in matters of water and hydraulic works (art. 4 DL 3/2003), and is a entity under public law of the Generalitat of Catalonia with its own legal personality and full capacity to act for the fulfillment of its functions (art. 7.2 DL 3/2003).

The communication or transfer of personal data, understood as "any disclosure of data made to a person other than the interested party" (art. 3.i) LOPD), which would occur, following the request object of consultation, between the company supplier and the ACA, will have to submit to the regime provided for in article 11 of the LOPD, according to which:

"1. The personal data subject to treatment can only be communicated to a third party for the fulfillment of purposes directly related to the legitimate functions of the assignor and the assignee with the prior consent of the interested party.

2. The consent required by the previous section is not necessary:

a) When the assignment is authorized by law.

(...)"

Given these forecasts, the communication to the ACA of the information requested in the request, to which the query refers (geolocation information of the meters), referred to and linked to subscribers of the water supply service who are natural persons, in the absence of the consent of the persons affected, must be covered by rules with legal status.

IV

Article 8.2 of DL 3/2003 specifies the functions that correspond to the ACA as the Hydraulic Administration of the Generalitat de Catalunya, among others, in the field of the internal basins of Catalonia, "to draw up and review the plans, the hydrological programs and projects, and monitor, administer and control hydraulic uses and the qualitative and quantitative aspects of water and the hydraulic public domain in general, including the granting of authorizations and concessions" (art. 8.2.a) DL 3/2003); "the promotion, construction, operation and maintenance of hydraulic works under the jurisdiction of the Generalitat" (art. 8.2.c) DL 3/2003); "the management, collection, administration and distribution of financial resources attributed to it

this Law" (art. 8.2.h) DL 3/2003), as well as "the requirement and the obtaining of the necessary information from physical and legal persons, public or private, for the exercise of the powers that attribute to him" (art. 8.2.k) DL 3/2003).

Article 8.6 of DL 3/2003 provides the following:

"In the exercise of its powers of planning and administration of resources, control of water use and **application of taxes that are part of its economic and financial regime**, the Agency must determine, in general, the systems of effective control of water flows used and discharges into the hydraulic public domain, land to sea and sanitation systems, which must be established in order to guarantee respect for existing rights, measure the volume of water actually consumed or used, allow the correct management of resources and ensure water quality.

For this purpose, the persons or entities holding the concessions, authorizations or permits, and all those who make private use of the resources, **must install and maintain at their expense the corresponding measurement systems that guarantee accurate information** about the flows of water consumed or used and, if applicable, returned; and also deal with the fees or prices that for this concept the Agency demands for the service of installation, maintenance and periodic verification of the measuring devices, or the costs derived from the subsidiary action of the Catalan Agency of the "Water in case of failure to comply with the obligation to install or maintain the measuring devices in the conditions indicated."

The aforementioned regulatory provisions are formulated in broad terms, and do not allow to deduce what information could be considered "necessary" (art. 8.2.k) DL 3/2003) or "precise" (art. 8.6 DL 3/2003), in relation with each of the competences of the ACA, specifically, in relation to the tax function related to the water fee (art. 13.a) DL 3/2003).

Having said that, according to article 62 of DL 3/2003:

62.1 The water fee is created as a specific revenue of the Catalan Water Agency's economic and financial regime, the legal nature of which is that of a tax with an ecological purpose.

62.2 [Not in force]

62.3 The application of the water fee affects the use of water provided by the supplying entities (...).

62.4 The management of the water fee corresponds to the Catalan Water Agency, which collects it directly from users or through public or private entities supplying water depending on the source of the resource.

(...)

62.6 The water bill must incorporate the concepts directly linked to the resource."

Regarding the collection of the water fee, article 75 DL 3/2003 provides the following:

75.1 The supplying entities are substitutes for the taxpayer and are obliged to pass on the full amount of the water fee to the end user, who is obliged to bear it.

75.2 The repercussion is made in the same invoice issued by the supplying entity to document the consideration for its services, as distinct from the service fee, (...). (...).

75.4 Water supply entities with an annual turnover of more than five hundred thousand cubic meters are obliged to declare and self-assess monthly to the Catalan Water Agency (...).

Likewise, supply entities with a turnover equal to or less than five hundred thousand cubic meters per year must declare and self-liquidate quarterly, (...).

75.5 Notwithstanding the provisions of section 4, **all entities** suppliers are required to submit to the Catalan Water Agency, no later than March 10 of each year, for each of the supply municipalities, a **summary statement** of the net impact made in the previous calendar year, adjusted to the model approved by resolution of the director of the Agency.

The supply entities with an annual **turnover of more** than five hundred thousand cubic meters must also submit a **detailed report of the turnover and the documents equivalent to the invoices, at the latest on March 10 of each year**, with an expression of the **totality of the data resulting from the repercussion of the water fee and those required by the regulations that regulate billing obligations**. This relationship must conform to the technical prescriptions dictated by the Agency.

Although it is not known what is the volume of invoicing carried out by the supplying company making the query, bearing in mind that the requirement of the ACA specifically requests the detailed relationship of the invoicing, for the purposes of this opinion it seems that it is necessary to start from the basis that the company would exceed said invoicing and, therefore, it is obliged to present said detailed report, in the terms of the second paragraph of article 75.5 DL 3/2003.

According to the requirement of the ACA, "in accordance with the current technical prescriptions, the identification of the subscribers is carried out by means of the postal address, the policy number and the meter number."

The same article 75.5 DL 3/2003, provides that the detailed report of invoicing should include the data "required by the regulations that regulate invoicing obligations."

Reference should be made to Decree 103/2000, of March 6, which approves the Regulation of the taxes managed by the Catalan Water Agency, which regulates the management and perception of the water fee through supply entities (arts. 37 et seq.).

Article 39.3 of Decree 103/2000 provides the following:

"93.3 In addition, supply entities with a turnover of more than one million cubic meters per year must present a detailed list of all invoices and equivalent documents issued in the previous year by each of their subscribers, with an expression of the **totality of the data resulting from the application of the water canon and also those required by Royal Decree 1496/2003**, 28 November, which approves the Regulation that regulates billing obligations, (...)"

Given that Royal Decree 1496/2003, to which the aforementioned article 39.3 of Decree 103/2000 refers, has been repealed by Royal Decree no. 1073/2014, of December 19 (which does not contain specific forecasts for the effects that are of interest), it is necessary to refer to article 6 of the Regulation which regulates invoicing obligations, approved by Royal Decree 1619/2012, of 30 November, according to which:

"1. All invoices and their copies will contain the data or requirements mentioned below, without prejudice to those that may be mandatory for other purposes and the possibility of including any other mentions: a) Number and, if applicable, series. (...). b) The date of its dispatch. c) Full name and surname, reason or corporate name, both of the person obliged to issue an invoice and of the recipient of the operations. d) Fiscal Identification Number (...), with which the operation has been carried out by the person obliged to issue the invoice.

(...)."

Given these regulatory provisions, it is clear that the applicable regulations provide for a flow of information related to the billing of the service, which may include data on subscribers and subjects liable for the water fee, which the supply companies must communicate to the ACA without the consent of those affected being necessary (eg art. 11.2.a) LOPD).

However, without prejudice to the information that must be included in the corresponding invoice, the request for information from the ACA is not made, given the information available, for the purposes of invoicing the service, but has the purpose - as it explains the requirement itself-, identify the liable subjects for tax purposes.

Therefore, it is necessary to take into account the provisions of the tax regulations, for the purposes of communicating the requested information.

v

The requirement of the ACA is based on article 93 of Law 58/2003, of 17 December, general taxation (hereafter, LGT), which establishes the following:

"1. The natural or legal persons, public or private, as well as the entities mentioned in section 4 of article 35 of this law, will **be obliged to provide the Tax Administration with all kinds of data, reports, antecedents and supporting documents with tax significance** related to the compliance with your own tax obligations or deductions from your economic, professional or financial relationships with other people. (...).

2. The obligations referred to in the previous section must be fulfilled in a general manner in the manner and terms that **are determined by regulation, or by means of an individualized request** from the Tax Administration that may be made at any time after the completion of the operations related to the required data or background."

In order for the LGT to be the enabling rule for the transfer of data to the ACA, it is necessary that the personal information subject to transfer has "tax significance" and that it is required by the Tax Administration (in this case, by the ACA, in relation to the powers attributed to it by the regulations in relation to the water fee),

in the form that is determined by regulation, or through individualized requirements.

As this Authority has decided on previous occasions (Opinions CNS 50/2017, CNS 22/2016, CNS 6/2015, CNS 48/2015, or CNS 21/2014), available on the website www.apdcat.gencat.cat), has "tax significance", in accordance with the jurisprudential analysis of this indeterminate legal concept, that information required by the tax authorities whose knowledge is necessary to find out whether or not the taxable persons are aware of their obligations taxes (STS of November 12, 2003, among others), as well as information that the tax authorities consider useful or effective in the application of taxes (STS of June 7, 2003, among others), that is to say, not only that necessary to establish the tax relationship, but any information that leads to the effective application of taxes. In short, the requests for information, to have tax significance, must refer to the fulfillment of their own tax obligations or of third parties (taxpayers) such as, in this case, the subscribers to whom the company supplier invoices the water supply service.

Given the regulations studied, the information requested (information relating to the subscribers, to whom the company provides the water supply service), can be linked to the management of a specific tax, such as the canon of water

Taking into account the regulation of the water canon (arts. 62 et seq. DL 3/20103), it cannot be ruled out that, for certain purposes of control, inspection, or management of the water canon, knowing the information about geolocation of meters may be relevant.

However, without prejudice to this, it does not follow from the regulations studied that, for the specific purpose of identifying the subscriber subject to the water fee - which is the one that makes the requirement explicit - it is necessary that the supplying company communicates to the ACA the data relating to the geolocation of the meters together with data identifying the natural persons who are liable for the water fee (eg art. 66.2 DL 3/2003).

The requirement of the ACA does not provide any elements that allow us to consider that the geolocation information of the meters is necessary or that, at least, it can be more or less relevant for the purposes of identifying subscribers, which is the only purpose that the own request to request the information. It is only pointed out that this information could be "good additional information" to that which would have been previously requested and which, it seems, already allows the identification of subscribers who are liable for the water fee.

Thus, in view of the justification provided with the query, it cannot be concluded that in the case at hand the "tax significance" required by the LGT for the communication of "UTM coordinates" information, together with the rest of personal data of those affected.

For all the above, from the perspective of data protection, the communication of the information subject to consultation, based on what is established by the LGT (art. 93), would be possible if the ACA sufficiently accredits the tax significance of this information, or if determined by regulation.

VI

As has been said, article 93 LGT (sections 1 and 2) provides that the Tax Administration (for the purposes that concern us, the ACA), can collect information with tax significance in the form determined by regulation, or through an "individualized requirement".

Without prejudice to the considerations made regarding the tax significance in the case at hand, it should be borne in mind that the requirement of the ACA is not formulated in relation to the personal information of a specific tax payer, or even with respect to a group identified as taxpayers, but in relation to all subscribers of the company which, according to the information available, provides service to several municipalities in Catalonia. That is to say, the requirement covers an undetermined and quantitatively relevant number of natural persons, given that, according to the information available on the company's website, it provides services in several municipalities in Catalonia.

In any case, the requirement subject to consultation would be "individualized" with regard to the direct recipient (a particular supplier company), but not with regard to its final recipients, who are the users and taxpayers and, therefore, the owners of the personal data processed.

As this Authority has agreed in previous opinions, this issue is clearly relevant from the point of view of data protection, given that the proportionality of the treatment, in this case of the request for information, is a key element in when assessing its legitimacy, as can be seen from article 4 of the LOPD, relating to the principle of data quality.

It should be borne in mind that the RGPD has given a letter of nature to the principle of minimization, understood as the requirement that only the data be processed to the extent that it is completely essential for the fulfillment of the intended purpose (Article 5.1.c).

Well, the existence of general information requirements with tax implications, **"as long as they appear sufficiently motivated"** and are adopted following the channels provided for in the law", can be understood as being justified, in accordance with the jurisprudence (STS of November 13, 2014, among others), in the fact that "in principle, todo sujeto pasivo de no importa qué tributos is subject to the power of verification and inspection of the Tax Administration".

In these cases "the Administration can obtain information, (...) imposing on certain persons, through general rules, the obligation to periodically supply the aforementioned data with fiscal significance, not through a request; (...)" (STS of February 7, 2014, among others).

Certainly, a request for information can refer not only to a specific person, but also to a set of people, in this case, tax payers of the water tax.

Now, in the case at hand, and beyond pointing out that the required data (UTM coordinates) can be good "complementary" information to identify the liable subjects, the justification or the reason why it would be necessary to know this information regarding all the taxpayers to whom the company provides the service, in addition to the information that is already included, currently, in the invoices, and that is the subject of communication to the ACA, for the information of what is available

For this reason, it is not possible to consider the need to communicate the information subject to consultation as sufficiently justified, referring to all of the subscribers subject to liability to whom the company provides service, at least, given the information available.

In accordance with these considerations, the following are made,

Conclusions,

In view of the information available when issuing this opinion, it does not appear from the regulations studied and the information provided that for the purpose of identifying the subscriber liable for the water fee it is necessary that the supplying company communicates to the ACA the data relating to the location of the meters together with the rest of the data that identify the natural persons affected.

Without prejudice to what has just been said, the communication of the required information, based on what is established by the LGT (art. 93), would be possible if the ACA accredits the tax significance of this information in relation to certain affected persons , or if determined by regulation.

Barcelona, February 20, 2018

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