

## **Report in relation to the Draft Decree approving the Regulation of Registry of grants and aid from Catalonia**

A letter from the Vice-President of the Government and Minister of Economy and Finance is presented to the Catalan Data Protection Authority, requesting that the Authority issue the mandatory report on the Draft Decree approving the Regulation of the Registry of subsidies and aid of Catalonia.

The Draft Decree consists of a statement of reasons, a single article approving the Regulation of the Register of Subsidies and Aids of Catalonia, which is inserted into the text thereof, and two final provisions. It is accompanied by a general report and an impact assessment report.

Having analyzed the Draft Decree, having seen the report of the Legal Counsel, I issue the following report.

### **Background**

Law 38/2003, of November 17, on general subsidies, amended by Law 15/2014, of September 16, on the rationalization of the public sector and other administrative reform measures, establishes that the administrations granting subsidies must send in the National Grants Database information on the calls for proposals and the concession resolutions provided for in the Law (article 18.2), and that the General Comptroller of each autonomous community is responsible for supplying this information (article 20.4.b)).

The Government Agreement of February 28, 2017, which approves the Generalitat de Catalunya's Comprehensive Subsidy and Aid Management Model, establishes that the Administration of the Generalitat of Catalonia and the entities created or participated in majority, directly or indirectly, for this, they must process all the files and procedures associated with aid and subsidies through the aid and subsidy processor (TAIS) and, while it is not fully implemented, they must facilitate the information required in terms of transparency through the Aids and Subsidies Register of the GECAT system (points 3 and 7).

The Grants and Subsidies Register is created with the aim of promoting transparency, improving the planning and management of the policies of the Catalan public administrations and collaborating in the fight against fraud in relation to grants and subsidies (Article 96 bis of the revised text of the Public Finances Law of Catalonia, approved by Legislative Decree 3/2002, of December 24, incorporated by Law 5/2017, of March 28).

The aforementioned article 96 bis, in its section 3, establishes that the scope, content and operation of the Register must be determined by regulation.

## Legal foundations

### I

(...)

### II

Article 1.2 of the Regulation of the Register of Subsidies and Aids of Catalonia (hereafter RAISC), provides that the RAISC is the single Register that includes all the subsidies and aids awarded by the public administrations of the territorial area of Catalonia, notwithstanding the existence of other records or databases created for other purposes.

Article 1.4 of the Regulation sets up the RAISC as the centralizing system for the information that must be sent to other databases or registers.

Article 4 of the Regulation provides the content of the information that must be supplied to the RAISC, which includes information on the beneficiaries, the management of the concessions, refunds, infringements and penalties imposed; and information about the persons or entities and the temporary period in which they cannot have the status of beneficiary or collaborating entity.

Article 4.2) of Regulation 2016/679, of the European Parliament and of the Council of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data and which repeals Directive 95/46/CE (hereinafter, RGPD), provides that "treatment" is any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction.

Given that, in the event that the beneficiaries of the subsidies are natural persons, it follows from the provisions of the aforementioned Draft Decree that a set of personal information will be treated, the principles and obligations established in the regulations will apply matter of personal data protection.

### III

Article 4 of the Project refers to the information that must be provided to the RAISC. The information to be provided is listed in a general way (e.g. "Information on the beneficiaries", so that there is a notable inaccuracy.

For the purposes of being able to assess the relevance of the information that is planned to be collected, and taking into account the regulatory nature of the rule, more concreteness would be necessary.

#### IV

Article 7.5 of the Regulation provides that the control and security of the data contained in the RAISC is governed by the applicable regulations on the protection of personal data. This forecast is positively evaluated.

In relation to this aspect, it should be noted that article 5.f) of the RGDPD establishes that personal data will be treated in such a way as to guarantee adequate security of personal data, including protection against unauthorized or illegal processing lawful and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures (integrity and confidentiality).

Article 24.1 of the RGDPD imposes on the controller the obligation to adopt the technical and organizational measures necessary to guarantee the security of the personal data that will be processed. The RGDPD sets up a security system that is not based on the basic, medium and high security levels provided for in the Implementing Regulation of Organic Law 15/1999, of December 13, on the protection of personal data, approved by Royal Decree 1720/2007, of December 21 (RLOPD), but by determining, following a prior risk assessment, which security measures are necessary in each case (Recital 83 and Article 32).

Therefore, the scheme of security measures provided for in the RLOPD cannot, since last May 25, be considered valid automatically. In some cases, these same measures may continue to be applied if it is concluded from the previous risk analysis that the measures are really the most suitable to offer a level of security appropriate to the specific case, but in others it may be necessary to complete them with additional measures.

It is also agreed that, in the case of public administrations, the application of security measures will also be marked by the criteria established in the National Security Scheme, approved by Royal Decree 3/2010, of January 8.

In this sense, it is necessary to make an indent to make it clear that the first additional provision of the Draft Organic Law on the Protection of Personal Data, approved by the Council of Ministers on November 10, 2017 (BOCG, series A, no. 13- 1, of 24.11.2017), establishes that "The National Security Scheme will include the measures that must be implemented in the case of personal data processing, to avoid its loss, alteration or unauthorized access, adapting the risk determination criteria in the treatment of data as established in article 32 of Regulation (EU) 2016/679."

#### V

Article 7.7 of the Regulation states that "The General Intervention is the body before which the right of access to the RAISC is exercised. The exercise of the rights of opposition, rectification and cancellation must be done before the body obliged to supply information". It should be noted at the outset that the wording of this article can be confusing.

The fact that the same paragraph refers to the right of access, together with the rights of opposition, rectification and cancellation, suggests that it is referring to the right of access provided for in article 15 of the LOPD and which currently provides for article 15 of the RGDPD.

If this is the case, it would be appropriate to clarify this, so as not to confuse this right of access with that provided for in Law 19/2014, of December 29, on transparency, access to public information and good governance. Neither the subjects holding the right, nor the object, nor the legal regime of both rights coincide, so it would be necessary to clarify this.

Secondly, it must be taken into account that in the case of the right of access provided for in Article 15 of the RGPD, and also the other rights provided for in the RGPD, they must be exercised before who is responsible for the treatment, that is, before whom determines the purposes and means of the treatment (art. 4.7 RGPD):

"responsible for the treatment or responsible: the natural or legal person, public authority, service or other organism that, alone or together with others, determines the ends and means of the treatment; if the Law of the Union or of the member States determines the purposes and means of the treatment, the person responsible for the treatment or the specific criteria for his appointment may be established by the Law of the Union or of the Member States.

Article 96 bis.3 of Legislative Decree 3/2002, which approves the revised text of the Public Finances Law, provides that "The General Intervention of the Generalitat is the body responsible for the administration and custody of the Registry of subsidies and aid from Catalonia". This is stated in article 7.1 of the RAISC Regulation.

If the General Intervention is effectively the person responsible for the treatment, the exercise of the rights granted to the interested party by the regulations on the protection of personal data must be able to be exercised before the person responsible for the treatment. It cannot be ruled out that, even in the case of the right of rectification or deletion, the error in the publication is not attributable to the supplying entity but to the body responsible for the RAISC.

Having said that, there will be cases in which some rights (specifically the right of rectification or the right of deletion) must be able to be exercised before the person responsible for the provision of the information, given that it is he who determines what information is communicated to the RAISC. Thus, for example, the General intervention can rectify the published information if it is a mistake made in the area of the RAISC, but not if the published information coincides with that which has been supplied by the entity responsible for the supply.

Finally, it should be borne in mind that the RGPD has extended the rights recognized to data holders with the right to limit treatment (art. 18) and the right to appeal automated individual decisions (art. 22) (not so the right to portability, which is not applicable in the cases in which the treatment is based on a mission in the public interest or in the exercise of public powers (art. 20.3 RGPD), and the right of cancellation has now called the right of deletion (art. 17).

Accordingly, the following wording is proposed:

"7.7 The rights recognized by the legislation regarding the protection of personal data can be exercised before the General Comptroller without prejudice to the fact that the rights of rectification or deletion can be exercised, where appropriate, before the entity responsible for the supply.

In the latter case, the entity responsible for the supply must notify the RAISC of the rectification or deletion carried out."

## VI

Article 8 of the Regulation establishes that "The information contained in the RAISC is reserved, except for the limitations on the right of access regulated in Law 19/2014 (...)".

A contradiction is observed between this provision and the purpose of publicity that article 1.3.a) of the same Regulation and that is included in article 6.1 of the Project (in line with what is established in article 96 bis. 4) of Legislative Decree 3/2002). In fact, the transitional provision also refers to RAISC's advertising, but it does not specify what this advertising will consist of. In short, it is not clearly specified which part of the content of the RAISC will be publicly accessible and which part will only be accessible to authorized users.

On the other hand, the wording of article 8 itself is contradictory, because after affirming its reserved nature, it adds "except for the limitations on the right of access regulated in Law 19/2014". It is clear that the limitations provided for in Law 19/2014 are not an exception to the reserved character but to the publicity of the information, so it seems that the wording is a mistake. Another thing is to say that RAISC information is reserved except for the data that must be published to comply with Law 19/2014.

Article 2.6 of the project also refers to this issue, but it is also not more clarifying given that it only makes one reference: "Access and publicity to this information must be in accordance with the provisions of the corresponding sector regulations (..)".

A clear distinction should be made between the information that will be reserved and that which, taking into account article 6.1 of the Project, would be published to comply with the publicity duties of article 15.1.c) of Law 19/2014. Thus, for example, article 15.1.c) of Law 19/2014 or article 20.8 of Law 38/2003, of November 17, General Subsidies, is more clarifying.

In any case, there is yet another contradiction because while in the statement of reasons (penultimate paragraph) it is indicated that the RAISC data must be reserved except for those that must be published to comply with Law 19/2014, in article 6.1 refers only to the active advertising obligations of article 15.1.c).

With regard to the users authorized to consult RAISC information, referred to in article 8.2, it must be taken into account that this will include information on offenses committed and sanctions imposed on beneficiaries or collaborating entities. It would therefore be necessary to clarify which people will have access to it, bearing in mind that, given the nature of this information, it will require an authorization in a standard with the rank of law.

In relation to the information on infringements and penalties (art. 2.5 and letter e) of article 4.1 of the Project), it would also be appropriate to clarify in the text of the project the term during which this information will be kept in the RAISC.

For all this the following are done,

## **Conclusions**

Having examined the Draft Decree approving the Regulation of the Register of Subsidies and Aids of Catalonia, it is considered adequate to the provisions established in the regulations on the protection of personal data, as long as the considerations made in this are taken into account report

Barcelona, September 18, 2018

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