

Report in relation to the Draft Decree amending Decree 37/2010, of March 16, approving the Regulation of gambling halls, Decree 24/2005, of February 22, which regulates certain prohibitions of access to gambling establishments and the Register of persons who are prohibited from accessing gambling halls, casinos and bingo halls, and Decree 23/2005, of February 22, which approves the Regulation of recreational machines and by chance

The Draft Decree amending Decree 37/2010, of March 16, approving the Regulation of gambling halls, Decree 24/2005, of February 22, is submitted to the Catalan Data Protection Authority which regulates certain prohibitions on access to gambling establishments and the Register of persons who are prohibited from accessing gambling halls, casinos and bingo halls, and Decree 23/2005, of 22 February, by which approves the Regulation of recreational and gambling machines, so that the Authority issues its opinion on it.

The Draft Decree consists of a preamble and three articles. It is accompanied by the reports issued by the Legal Counsel and by the Data Protection Delegate of the Department of the Vice-Presidency and of the Economy and Finance.

Having examined this Draft Decree, and having seen the report of the Legal Counsel, the following is reported.

Background

Decree 37/2010, of March 16, approving the Regulation of gambling halls, establishes the possibility that gambling halls can request and obtain an authorization to install special machines for gambling halls in a dependency to the effect in the same room. In this case, it is required that the control of the access of people who are prohibited from entering gambling halls is applied exclusively to this dependency, but not to the rest of the gambling hall (article 26).

In recent years, there has been a significant increase in the number of complaints and denunciations from people affected by gambling problems, which show that the ban on entry of people who are registered in the Register of people who are prohibited access to gambling halls is not achieving the purpose for which it exists.

Given this situation, the Department of the Vice-Presidency and of Economy and Finance considers it necessary to modify Decree 37/2010, as well as, for regulatory consistency with the proposed modification, Decree 24/2005, of February 22, which regulates certain prohibitions on access to gambling establishments and the Register of persons who are prohibited from accessing gambling halls, casinos and bingo halls, and Decree 23/2005, of 22 February, which approves the Regulation of recreational and gambling machines.

At the same time, given the full applicability of Regulation (EU) 2016/679, of the 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 'these data, it is also considered necessary to adapt the regulation of the Register of people who are prohibited from accessing gambling halls, casinos and bingo halls, established in Decree 24/2005, cited.

Legal foundations

I

(...)

II

The draft decree being examined consists of three articles:

- Article 1, which modifies Decree 37/2010.
- Article 2, which modifies Decree 24/2005.
- Article 3, which modifies Decree 23/2005.

Given the content of these articles, this report will focus on analyzing the forecasts contained in article 2 of the Draft Decree.

III

Article 2 of the Draft Decree establishes, in its section 2, the modification of article 3 of Decree 24/2005, which is drafted as follows:

"Article 3. Registration in the Register of persons who are prohibited from accessing gambling halls, casinos and bingo halls. The person in charge of the general management competent in matters of gambling and betting must register the persons who are prohibited from 'access to gambling premises, in accordance with what is established in the following articles, in the Register of persons who are prohibited from accessing gambling halls, casinos and bingo halls, which is included in the Register of Processing activities of the Department competent in matters of gambling and betting".

Having put the text of this article in relation to the original wording of Decree 24/2005, it can be verified, for the purposes of interest, that the reference made there to the "personal data file" has been removed and one has been added to the "Register of Processing Activities". As stated in the attached reports, this modification is motivated by the new RGPD.

Certainly, the full applicability of the RGPD, which took place last May 25, has meant the removal of the need to formally create, modify or delete files, and to notify them to the data protection register of the control authorities, which provided for Organic Law 15/1993, of December 13, on the protection of personal data (hereinafter, LOPD).

At the same time, however, it has led to the establishment of new obligations for those responsible and those in charge of the treatment, such as, among others, keeping a Register of Processing Activities (hereafter, RAT).

This is a register in which, with respect to each processing activity, the information established by article 30 of the RGPD must be recorded. Thus, with regard specifically to the RAT of the data controller, it must contain (paragraph 1):

- Name and contact details of the person in charge and, where applicable, of the co-person in charge, as well as of the Data Protection Officer, if any.
- Purposes of the treatment.
- Description of categories of interested parties and categories of personal data processed.
- Categories of recipients to whom the data is or will be communicated, including recipients in third countries or international organizations.
- International data transfers.
- When possible, the deadlines for deleting the data.
- Where possible, a general description of the technical and organizational measures of security.

It is clear, in accordance with these precepts, that the Department must carry a RAT in which it states, with respect to each of the processing operations or activities for which it is responsible, the information mentioned in article 30.1 of the RGD. It is also true that one of these treatment activities described in your RAT must be the registration of people who are prohibited from accessing gambling halls, casinos and bingo halls in the register created for that purpose.

Although it can be understood that with the reference to the RAT in the new wording of article 3 of Decree 24/2005 an attempt has been made to address these issues - an aspect that must be positively assessed -, the truth is that this end is not sufficiently clear. In fact, with the wording used, it rather seems to indicate that the Register of persons who are prohibited from accessing gambling halls, casinos and bingo halls (registry regulated in Decree 24/2005) is integrated into another register (the RAT), when in reality it is two different registers that respond to different objectives.

For the purposes of avoiding possible confusion and unnecessary repetitions, it would be advisable to remove said reference to the RAT from this article 3.

In this sense, the following wording is suggested:

"Article 3. Registration in the Register of persons who are prohibited from accessing gambling halls, casinos and bingo halls. The person in charge of the general management competent in matters of gambling and betting must register the persons who are prohibited from "access to gambling premises, in accordance with what is established in the following articles, in the Register of persons who are prohibited from accessing gambling halls, casinos and bingo halls."

IV

Article 2 of the Draft Decree establishes, in its section 3, the modification of article 10 of Decree 24/2005, which is drafted as follows:

"Article 10. Registration of people who are prohibited from accessing gambling halls, casinos and bingo halls.

The Register of persons who are prohibited from accessing gambling halls, casinos and bingo halls is intended to include the data of natural persons who are prohibited from accessing gambling halls, casinos and bingo halls and gambling halls, at their own request or as a result of a sanctioning procedure or a judicial resolution, in order to be able to make these prohibitions effective.

The data in the Register is subject to the regulations on the protection of personal data and its treatment must be recorded in the Register of Processing Activities of the Department competent in matters of gambling and betting,

which must contain the information established by the regulations in force in each moment

The Register of Processing Activities must be updated on the website of the Department competent in matters of gambling and betting".

This article modifies practically in its entirety the wording established in Decree 24/2005, which focused, rather than on the substantive regulation of the Register of persons who are prohibited from accessing gambling halls, casinos and bingo halls, on the regulation of the corresponding personal data file.

As previously discussed, the RGPD eliminates the obligation to create, modify or delete files contemplated in the LOPD, which, in the case of public administrations, had to be carried out through a general provision (article 20). The Department then decided to regulate in this article the file relating to the processing of data that was derived from the creation of the Register of persons who are prohibited from accessing gambling halls, casinos and bingo halls.

By virtue of the primacy principle and the direct effect of the European Union Regulations, it can be understood that the full applicability of the RGPD means that the existing general provisions that regulate personal data files remain, from last May 25, without effects.

In the present case, the Department, given the need to adapt Decree 24/2005 to the modification introduced in Decree 37/2010, has chosen to also modify the content of this article 10 of Decree 24/2005 with the will to 'try to adapt it to the RGPD.

In this sense, the express reference to the personal data protection regulations contemplated therein must be positively assessed. Regarding this, it should be noted that the Department, as responsible, must comply with the provisions of the RGPD and must be able to demonstrate that it complies (Article 5 RGPD). Consequently, you must take into account that the personal data of the Register of people who are prohibited from accessing gambling halls, casinos and bingo halls must be:

- Treated lawfully, loyally and transparently in relation to the interested party (lawfulness, loyalty and transparency).
- Collected for specific, explicit and legitimate purposes and subsequently not to treat in a manner incompatible with these purposes.
- Adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated (data minimization).
- Accurate and, if necessary, must be updated.
- Stored in such a way as to allow the identification of the interested parties for a period no longer than is necessary for the purposes of processing personal data ("retention period limitation").
- Treated in such a way as to guarantee adequate security ("integrity and confidentiality").

The examined article also provides that the processing of data that derives from the registration in the Register of persons who are prohibited from accessing gambling halls, casinos and bingo rooms will be included in the Department's RAT with the information it requires in this regard article 30 of the RGPD, as well as the RAT must be kept updated on the Department's website.

Regarding this, it should be noted that the RGPD does not require that in the regulation of a certain treatment operation or activity (as in this case it would be the regulation of registration in the

forementioned register) it is expressly established that this treatment operation will be recorded in the RAT.

Therefore, it should be borne in mind that, from the data protection point of view, it would not be necessary to include these provisions on the RAT in the new wording of article 10 of Decree 24/2005.

Given this, and taking into account the similarity between the provisions of this article 10 (first paragraph) and those of article 3 (previously examined), it would be advisable to proceed with the repeal of article 10, through the inclusion of a repealing provision in the text of the Draft Decree that is now being examined.

Otherwise, if it is considered appropriate to maintain the provisions on the RAT, the possibility of recasting in a single article the modifications introduced by this Draft Decree regarding articles 3 and 10 of Decree 24/2005 could be considered.

In this sense, the following wording is suggested:

"Article 3. Registration of people who are prohibited from accessing gambling halls, casinos and bingo halls.

The person in charge of the general management competent in matters of gambling and betting must register the persons who are prohibited from accessing gambling premises, in accordance with the provisions of the following articles, in the Register of persons who are prohibited access to gambling halls, casinos and bingo halls.

The data in the Register is subject to the regulations on the protection of personal data and its treatment must be recorded in the Register of Processing Activities of the Department competent in matters of gambling and betting."

For all this the following are done,

Conclusions

Examined the Draft Decree amending Decree 37/2010, of March 16, approving the Regulation of gambling halls, Decree 24/2005, of February 22, which regulates certain prohibitions on access to establishments of gambling and the Register of persons who are prohibited from accessing gambling halls, casinos and bingo halls, and Decree 23/2005, of February 22, which approves the Regulation of recreational and gambling machines, is considered adequate to the provisions established in the corresponding regulations on the protection of personal data, as long as the considerations made in this report are taken into account.

Barcelona, October 11, 2018