

Report in relation to the Draft Decree on the creation and operation of electronic, IT and telematic media for the holding of electronic public auctions by the Catalan Tax Agency

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 on the creation and operation of electronic media, computers and telematics for the holding of electronic public auctions by the Catalan Tax Agency.

The Draft Decree consists of a statement of reasons, sixteen articles, two additional provisions and a final provision. It is accompanied by a legal report.

Having analyzed the Draft Decree, taking into account the current applicable regulations, having seen the report of the Legal Counsel, I issue the following report.

Background

Article 122-8 of Law 17/2017, of August 1, of the Tax Code of Catalonia and of the approval of the first, second and third books, relating to the Generalitat's tax administration, provides that the tax administration of the Generalitat must promote the use of the techniques and electronic, computer and telematic means necessary for the development of its activity and the exercise of its powers.

Article 112.3.1.b) attributes to the Tax Administration of the Generalitat the collection management of public law resources owned by the Generalitat and, if this function has been attributed to it, those owned by other public administrations Catalan

Article 100.2 of the General Collection Regulation provides that the ordinary procedure for awarding seized goods will be the public auction, which will proceed whenever no other form of alienation is expressly applicable, and that the auction of the goods will be carried out by electronic

Article 100.4 of the aforementioned Regulation provides that the interested parties may participate in the procedures for the disposal of the seized goods by means of electronic, computer and telematic means that are approved by the competent body. This Decree creates and puts into operation the electronic, computer and telematic means for the participation of interested persons in the procedure for the disposal of seized goods by auction through the Tax Agency's Auction Portal.

Legal foundations

I

(...)

II

Article 1 of the Project provides that its object is the regulation of the use of electronic, computer and telematic media for the holding of electronic public auctions for the disposal of seized goods through the Agency's new auction portal Tax Office of Catalonia, and the necessary conditions for the execution of these auctions and the electronic participation of bidders.

Article 3 establishes that the aforementioned portal is developed in accordance with all the standards of efficiency, effectiveness, transparency, security, proximity and participation considered in Law 29/2010, of August 3, on electronic media public sector of Catalonia, and must guarantee advertising, competition and the protection of personal data, in order to facilitate bidders' access to auctions.

Article 5 of the Project establishes that the Central Collection Office of the Catalan Tax Agency will be the managing authority of the auction.

Article 7 of the Project provides that people and entities interested in participating in the auction portal must identify themselves as users of the system by means of the electronic means of authentication accepted at the electronic headquarters of the Tax Agency of Catalonia.

Article 13 of the Project establishes how the communications will be made to the persons and entities bidding, from the time they are registered on the auction portal until the publication of the results of the auctions on the portal.

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 (hereafter, 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 the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction.

Given that the aforementioned provisions of the Draft Decree show that a set of personal information will be treated, the principles and obligations established in the regulations on the protection of personal data will apply. In this sense, the content of article 16 of the Project is positively evaluated which, in addition to making reference to these principles and obligations, includes what will be the purpose of the treatment, its person responsible (the Tax Agency of Catalonia), and the rights that those affected by the treatment may exercise (access, rectification, deletion, opposition and limitation).

III

Article 3 establishes, among others, that the aforementioned portal is developed in accordance with Law 29/2010, of August 3, on electronic media in the public sector of Catalonia, and that it must guarantee the protection of personal data.

This forecast is positively valued but from the data protection side, it should be noted that the provisions of article 15 of Law 29/2010 must be taken into account, which establishes a series of criteria that have to take into account when incorporating electronic media in the performance of the public sector, especially, "the impact of the incorporation of electronic media on the security of documentation and information and personal data that contain" (section d).

In this sense, the additional provision of the Project establishes that the person in charge of the competent department of Finance of the Generalitat de Catalunya can dictate the provisions necessary for the development and execution of the portal's security policies.

In relation to this aspect, it should be noted that article 5.f) of the RGPD 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 RGPD 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 RGPD 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.1 of the Draft Organic Law on the Protection of Personal Data, published in the BOCG on October 9, 2018 (BOCG, series A, no. 13 -3), establishes that "The National Security Scheme will include the measures that must be implemented in case of personal data treatment, to avoid its loss, alteration or unauthorized access, adapting the criteria for determining the risk in the treatment of the data as established in article 32 of Regulation (EU) 2016/679."

IV

Article 16.2 of the Project establishes that the personal data requested through the services of the auction portal are subject to the duty of reservation in Article 95 LGT. For its part, section 3 of the same article establishes that

the data processed on the portal are included in the tax purpose for which the ATC is responsible.

It should be borne in mind that, as stated in the first paragraph of the statement of reasons for the project, the auction procedure can lead not only to debts of a tax nature but also to any other income under public law. Regarding this other type of information, the tax purpose would not be predictable, nor would the provisions of article 95 LGT apply.

v

Article 4 of the Project states that the auction announcement must be published in the Official State Gazette, in the Official Journal of the Generalitat of Catalonia, in the Auction Portal of the Catalan Tax Agency and on the website of Tributes of Catalonia.

Regarding the advertising of the auction announcement, it is understood that the dissemination of personal information via the internet constitutes a communication of personal data which, in any case, must be done in accordance with data protection principles.

It should be borne in mind that according to article 4.1) RGPD personal data is all information referring to an identified or identifiable natural person. Therefore, the auction announcement, even if it does not contain identifying data, may give personal information. For example, in the case of auctioning real estate, even if the owner is not identified, this could be easily identifiable. This is a type of information that can cause clear damage to the affected person, both from a personal, social and financial point of view. An example is the case included in the Judgment of the Court of Justice of the European Union of May 13, 2014 (Google vs. Spain).

Article 39 RGPD provides:

"...Personal data must be adequate, relevant and limited to what is necessary for the purposes for which they are processed. This requires, in particular, to guarantee that its retention period is limited to a strict minimum. (...). To ensure that personal data is not kept longer than necessary, the data controller must establish periods for its deletion or periodic review. (...) Personal data must be treated in a way that guarantees adequate security and confidentiality of personal data, including to prevent unauthorized access or use of said data and the equipment used in the treatment."

The Project envisages an advertising system that incorporates a clear desire to adapt to this principle. Thus, it is expected that the information published in the official newspapers will consist only of the date of the auction, the body before which the procedure is followed and the link to the ATC auction portal, where the rest of the information. In other words, the advertisement published in the official newspapers would not include personal data. This scheme would conform to the aforementioned principle.

However, this operating scheme should also be extended to the additional means of publication referred to in article 4.3 of the Project. For this reason, it is proposed to modify the wording of section 3 in the following sense:

"4.3 The announcement referred to in paragraph 1 can also be published in the mass media, in specialized publications and in any other medium suitable for the purpose, when the competent collection body agrees. "

But beyond that, it would be advisable for the Project to incorporate a provision to avoid the indexation of the personal data contained in the auction announcement published on the portal and on the website of Tributs de Catalunya by search engines outside the portal itself . On the other hand, it would be necessary to limit the period of exposure of the information published on the portal to the minimum necessary for the realization of the auction, since once it has been carried out it is no longer necessary to advertise it.

For this reason, it is proposed to incorporate a second paragraph in section 2, with wording similar to the following:

"Without prejudice to the research systems established by the Catalan Tax Agency, the necessary mechanisms must be established to avoid the automatic indexing and retrieval of electronic auction announcements by means of search engines from the Internet, and to prevent access once the auction has been carried out".

VI

Article 7 of the Project establishes that people and entities interested in participating in the Portal must identify themselves as users of the system through the electronic means of identity authentication accepted at the Agency's electronic headquarters Tax Office of Catalonia, and also provides that they will be warned of the conditions under which the alienation procedure will take place through the Portal.

The data that will be collected to identify the bidders are not detailed, but due to the fact that they will have to prove their identity, at least the identifying data of the name, surname and national identity document number will be collected.

In any case, the processing of this information makes it necessary to inform the bidders about the processing of their data. Article 16.3 of the project seems to refer to this issue when it states that "The information is located in the Data Protection section of the ATC's electronic headquarters.

Without prejudice to the fact that the publication of information on the processing of personal data on the web is a practice, it must be remembered that prior to the collection of the data, the provisions of article 13 of the RGPD must be observed in order to effect to provide interested parties with the following information:

"a) the identity and contact details of the person in charge and, where appropriate, of their representative; b) the contact details of the data protection officer, if applicable; c) the purposes of the treatment for which the personal data is intended and the legal basis of the treatment; d) when the treatment is based on article 6, section 1, letter f), the legitimate interests of the person in charge or of a third party; e) the recipients or the categories of recipients of the personal data, as the case may be;

f) where appropriate, the intention of the person in charge to transfer personal data to a third country or international organization and the existence or absence of a

decision of adequacy of the Commission, or, in the case of the transfers indicated in articles 46 or 47 or article 49, section 1, second paragraph, reference to the adequate or appropriate guarantees and the means to obtain a copy of these or to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will provide the interested party, at the time when the personal data is obtained, the following information necessary to guarantee a fair and transparent data treatment: a) the period during which personal data will be kept or, when not possible, the criteria used to determine this period; b) the existence of the right to request from the person responsible for the treatment access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to the portability of the data ;

c) when the treatment is based on article 6, section 1, letter a), or article 9, section 2, letter a), the existence of the right to withdraw consent at any time, without it affecting the legality treatment based on consent prior to its withdrawal; d) the right to present a claim before a control authority; e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data;

f) the existence of automated decisions, including the creation of profiles, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information on the logic applied, as well as the importance and expected consequences of said treatment for the interested party. (...)"

For these purposes, it would not be sufficient for the information to appear in the data protection section, but it should appear clearly visible in the data collection form, either completely or through a two-layer information system such as what is proposed in the Guide for the fulfillment of the duty to inform ([http://apdcat.gencat.cat/ca/documentacio/RGPD/altres_documents_dinteres/Guia-per-al-compliment-del-deure-dinformar-al-RGPD -/](http://apdcat.gencat.cat/ca/documentacio/RGPD/altres_documents_dinteres/Guia-per-al-compliment-del-deure-dinformar-al-RGPD-/)) published by this Authority.

For all this the following are done,

Conclusions

Having examined the Draft Decree on the creation and operation of electronic, computer and telematic means for the holding of electronic public auctions by the Catalan Tax Agency, it complies with the regulations on the protection of personal data, as long as they have taking into account the observations made in this report.

Barcelona, 31 October 2018