

CNS 36/2019

Opinion in relation to the query made on the publication of the remuneration of the management bodies of private entities that receive subsidies for an amount greater than 10,000 euros

A letter is submitted to the Catalan Data Protection Authority in which it is requested that the Authority issue an opinion to assess whether the publication of the remuneration of the management bodies of private entities that receive subsidies for an amount greater than 10,000 euros requires anonymizing some of the personal data contained in the declaration form, specifically the name, the ID number and the manual or electronic signature of the legal representative.

Having analyzed the query, which is accompanied by an example of a declaration in order to communicate the remuneration to the granting entity, and in accordance with the report of the Legal Adviser, I issue the following opinion:

I

(...)

II

As set out in the consultation, article 15.2 of Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC) establishes the following:

"2. The regulatory bases for the granting of subsidies and public aid that can be awarded for an amount greater than 10,000 euros must include the obligation of the beneficiaries, if they are legal persons, to communicate to the obliged subjects the information relating to their remuneration management or administration bodies, in order to make them public. In the legal cases in which a competitive process is not applied to grant subsidies or aid, this obligation must be included in the corresponding act or agreement."

This is an active advertising obligation that is imposed on the concessionary entity of the subsidies, but which affects not the bodies of the entity that grants the subsidies but the management and administration bodies of the legal entities that are beneficiaries of the subsidies. Obligation of active advertising that the granting entity must fulfill based on the information provided by the beneficiary entity of the aid or subsidy.

In this case, the active advertising obligation imposed by the transparency regulations (art. 15.2 LTC) constitutes the necessary legal basis both for the communication of the personal data held by the beneficiary entity, and for the subsequent publication by the administration that

grants aid or subsidies (art. 6.1.c) of Regulation (EU) 2016/679, general data protection (RGPD)).

As can be seen from the anonymized example of the declaration that is attached to the query, it is foreseeable that the declaration will contain data from the person who carries out the communication of data, representing the beneficiary entity, as well as data that directly or indirectly may be related to the people who hold the positions of management and administration of the entity.

Given that the purpose of the inclusion of one and the other is different, we will analyze on the one hand the data relating to the representative person and then, on the other hand, the data relating to the management and administration bodies.

III

With regard to the data of the person who acts as a representative of the beneficiary entity and who signs the declaration, in the declaration model that is attached to the query, the name and surname, the number. of ID and the signature (could be handwritten or electronic).

The collection of this information by the entity that has awarded the aid may be necessary for the purposes of being able to guarantee the authenticity and veracity of the information that must then be published. However, once the granting administration has established that the person signing the declaration is authorized to do so, it is not necessary to publish the document containing the declaration. Article 15.2 LTC only requires the publication of information relating to the remuneration of management and administration bodies. And this can be carried out perfectly without the need to publish any data relating to the person who acts as a representative of the legal entity, because the purpose of active advertising is not this but to be able to verify the remuneration levels of the governing bodies of the beneficiary entities of aid or subsidies.

In fact, for the purposes of active advertising, the information that would be relevant would be the identification of the legal entity beneficiary of the aid and subsidies, although, curiously, in the example of the declaration sent, there is no space to record this information

In conclusion, regardless of whether the declaration may contain these data, the publication of the identity, the no. of ID or the signature of the representative signing the declaration would be disproportionate and contrary to the principle of data minimization (art. 5.1 c) RGPD), according to which the data that is processed (in this case the data that is published) must only be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.

IV

With regard to the data of the people who occupy the management and administration bodies of the beneficiary entities, it must be taken into account that the purpose of the rule is not to allow the control of the people who occupy these positions, but the control of the entities that receive public aid, so that citizens can have information about the destination of the resources

of the entity, at least with regard to its superior bodies which, in principle, can be assumed to be the ones that would have higher remuneration levels associated with them.

In this sense, and in the light of the aforementioned principle of minimization (art. 5.1.c RGPD), it does not seem necessary for the remuneration to appear directly associated with the name and surname of the person holding the position. In fact (and unlike article 11.1.b) or article 3.2 LTC which refer respectively to "managerial staff" or "managerial positions"), article 15.2 refers to "organs". And this mention can be understood to be achieved by indicating only the remuneration received by each of the bodies, in addition to the information on the beneficiary legal entity, without the need to identify the people who occupy these bodies by name and surname.

We must bear in mind that these are entities that, in principle, are not subject to the LTC (therefore the provisions that oblige them to identify the persons holding their bodies do not apply to them (art. 9.1. b)) and which only become so, with the limited regime established by article 15.2 LTC, from the moment they receive subsidies or aid above the amount determined therein.

It is also true that the fact that the name and surname are not expressly stated in the information that is published will not be able to prevent that, in other ways, the remuneration of the body may end up being linked to the identity of the person or persons who occupy the place, but without any doubt the sacrifice for the right to personal protection will be less if the publication is limited to including the name of the body.

In accordance with the considerations made in these legal foundations in relation to the consultation raised on the publication of the remuneration of the management bodies of private entities that receive subsidies for an amount greater than 10,000 euros, the following are made,

Conclusions

In accordance with the data protection regulations, it is not justified to publish the first and last name, ID number and signature of the person who describes the statement on the remuneration of the managerial and administrative positions of the entity for the purposes established in the article 15.2 LTC, it being sufficient to publish the remuneration associated with each of the management or administration bodies of the entity.

Barcelona, July 16, 2019