Ref. CNS 41/2019

Opinion in relation to the consultation of a health center on the transfer of a patient's data to the Tax Agency (AEAT) as part of an inspection procedure

A letter from a health center (hereafter, the Hospital) is submitted to the Catalan Data Protection Authority, in which a report is requested to this Authority on the communication of a patient's data at the request of the Agency tax authority (AEAT), as part of an inspection procedure.

In particular, the consultation formulates several questions regarding the nature of the personal data requested by the AEAT, and regarding the possibility of transferring the requested data.

Having analyzed the request, which is not accompanied by more information, in view of the current applicable regulations, and the report of the Legal Counsel, the following is ruled.

Legal Foundations

I

(...)

II

According to the query, the Hospital would have received a request from the Tax Agency (AEAT), "as part of an inspection procedure where, among other information, the following information about a specific patient was requested: Dates of medical visits, consultations, appointments or medical tests carried out, as well as periods of hospitalization."

The consultation adds that in the request for information, which is not attached to the document in which the consultation is formulated, the AEAT did not provide any justification for the reason why the information would be necessary, nor the legal basis that allowed the transfer of data beyond citing, according to the query, the sanctioning power regulated in Law 58/2003, General Taxation.

The consultation explains that, according to the Hospital, the justification provided by the AEAT would be insufficient for the type of information requested, so it would have asked the AEAT to specify the reason for the request and the obligations taxes that would justify the transfer of the information. According to the inquiry, the Hospital has not received any further information to validate the viability of the transfer of data "for the AEAT to consider that this additional information is of a confidential nature".

With all this, the Hospital formulates the following questions:

> **"- First of all, and regarding the nature of the data requested by the AEAT (dates relating to visits, summonses, admission periods...) we understand that they are health data, and therefore special categories of data ? And in the case of not providing the reason for the visit or summons, should we understand that they remain special categories of data?**

- Secondly, and based on the fact that the data indicated in the previous question are special categories of data, in the face of a request for information from the AEAT, formulated on the basis of its sanctioning power provided for in the General Tax Law, without providing any additional argumentation, is it correct for the Hospital to request that the reason for which the information is requested be specified, including that relating to the tax obligation affecting the subject for whom information is requested?

- If the information requested by the AEAT does not include health data or other special categories of data, do we understand that the reason and legal basis for the request must also be justified?

- Finally, and in the event that it is not necessary for the AEAT to provide any additional justification to the General Tax Law itself for the purposes of the Hospital providing the requested information, we understand that the information we must send includes only the dates of the visit or admission, without saying the reason or service in which the patient was visited, or should this information also be provided?"

With the consultation in these terms, it is necessary to start from the basis that, according to article 4.1) of Regulation (EU) 2016/679, of April 27, general data protection (RGPD), they are personal data. any information about an identified natural person or identifiable ("the interested party"); every person will be considered an identifiable natural person whose identity can be determined, directly or indirectly, in particular by means of a identifier, como por ejemplo a number, an identification number, data from location, an online identifier or one or more elements of identity physical, physiological, genetic, psychological, economic, cultural or social of said person;

According to article 4.15 of the RGPD, it is data relating to health: "personal data relating to the physical or mental health of a natural person, including the provision of health care services, which reveal information about their state of health" .

In relation to the concept of personal information related to health, according to the Considering 35 of the RGPD:

"Among the personal data relating to health must be included all the data relating to the state of health of the interested party that give information about their past, present or future state of physical or mental health. It includes the information on the natural person collected on the occasion of his registration for health care purposes, or on the occasion of the provision of such assistance, in accordance with Directive 2011/24/EU of the European Parliament and of the Council (1); any number, symbol or data assigned to a natural person that uniquely identifies him for health purposes; (...).”

The processing of data (art. 4.2 RGPD) of natural persons who receive assistance in health centers is subject to the principles and guarantees of the personal data protection regulations (RGPD, and Organic Law 3/2018, of December 5 , of protection of personal data and guarantee of digital rights (LOPDGDD)).

The information relating to the fact that a patient has been treated in a certain health center, the date of the patient's hospital or medical discharge, information about the disease or condition he suffers from and the severity of this disease, in short, any information about the health care provided to a certain patient in a hospital center is patient health information (art. 4.15 RGPD).

Therefore, treating and, in particular, communicating information about the medical care that a patient receives at the health center to other people, in this case, to the Tax Administration,

means providing information related to health and the healthcare treatment received by the affected or interested party (art. 4.1 RGPD), which may be included in their clinical history (HC), the content of which is regulated in the sectoral regulations (article 10.1 Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and clinical documentation; article 15.2 Law 41/2002, of November 14, basic regulatory of the 'patient autonomy and rights and obligations regarding information and clinical documentation).

The Hospital asks if "if we do not provide the reason for the visit or summons, we must understand that they continue to be special categories of data".

It must be specified that the HC of a patient includes, on the one hand, identification data of the patient and of the assistance received (art. 10.1.a) Law 21/2000), clinical care data specifically related to the pathology or disease of the patient, family history, the clinical course, in short, the state of health of this patient (art. 10.1.b) Law 21/2000), and social data (art. 10.1.c) Law 21/2000).

The information contained in the HC in the terms provided for in the regulations is as a whole information about the patient's health, protected by the regulations (art. 9 RGPD and patient autonomy legislation), and not only that medical information that gives greater degree of detail about the patient's illness or treatment.

Thus, for example, the date of assistance received or, where appropriate, the date on which a patient was admitted to hospital, is information from the patient's HC and as such is deserving of protection, even if the specific disease or pathology of the patient is not specified.

As this Authority has agreed in Opinion CNS 37/2018, from the data relating to the room where a patient is admitted (art. 10.1.a) Law 21/2000) it is inferred, from the outset, the fact that this person is admitted to a hospital and suffers from an illness or health problem, even if this is not specified. Even, depending on the medical center in question, the disease affecting the admitted patient could be deduced from the simple record of the admission.

It must therefore be understood that communicating information about a patient's HC (such as the date of a medical visit or the medical center in which he was treated) means communicating health data, even if it is not specified with detail the illness you are suffering from, or the specific reason for which you have been treated.

For all that has been said, with regard to the first question posed, there can be no doubt that the data that the Tax Administration requests from the Hospital about a specific patient (dates of medical visits, consultations, summonses or tests medical procedures carried out, as well as periods of hospitalization), are health data of this patient (art. 4.15 RGPD), even if the reason for the visit or summons is not provided, and as such are subject to the protection regime provided for in article 9 of the RGPD.

III

Having said that, the Hospital formulates the second question, specifically, if "in the face of a request for information from the AEAT, formulated on the basis of its sanctioning power provided for in the General Tax Law, without providing any additional arguments, it is correct that the Hospital request that the reason for which the information is requested be specified, including that relating to the tax obligation that affects the subject for whom information is requested?

According to article 6.1 of the RGPD:

"1. The treatment will only be lawful if at least one of the following conditions is met:

(...)

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment;

(...).”

Article 6.3 of the RGPD adds the following:

"3. The basis of the treatment indicated in section 1, letters c) and e), must be established by:

a) the Law of the Union, or)
the Law of the Member States that applies to the person responsible for the treatment.

(…).”

In the absence of other legal bases that enable the communication (such as the consent of the affected person, ex. art. 6.1.a) RGPD, which due to the information available does not apply in this case), it can be lawful the communication of data of a natural person, based on a legal obligation that is imposed on the data controller (art. 6.1.c)
RGPD), as could the fulfillment of an obligation provided for in tax legislation.

Complying with the request of the Tax Administration would entail the communication of health data and, therefore, it should be taken into account that article 9 of the RGPD regulates the general prohibition of the processing of personal data of various categories, among others , of the data relating to health (section 1). Section 2 of the same article provides that this general prohibition will not apply when one of the circumstances listed therein occurs, among which it is worth noting:

"(...)

g) the treatment is necessary for reasons of an essential public interest, on the basis of the Law of the Union or of the Member States, which must be proportional to the objective pursued, essentially respect the right to data protection and establish measures adequate and specific to protect the fundamental interests and rights of the interested party;

(...)”.

To this it should be added that, according to article 9.2 of the LOPDGDD:

"2. Data processing contemplated in letters g), h) ei) of article 9.2 of Regulation (EU) 2016/679 based on Spanish law must be covered by a law-enforcement law, which may establish additional requirements relating to its security and confidentiality.

(…).”

Given the special treatment of the categories of data in Article 9 of the RGPD, it should be understood that the concurrence of any "public interest" (in the terms that, for example, are foreseen in Article 6.1.e) RGPD), could not enable the processing of

special category data. The public interest (in the absence of other authorizations provided for in article 9.2 of the RGPD, which do not seem to apply in the case at hand), must be "essential", in order to justify the restriction of a fundamental right This has been made clear by STC 76/2019, of May 22, which annuls paragraph 1 of article 58 bis of the LOPDGDD, in relation to the authorization of the treatment through the article 9.2.g) RGPD which, we insist, seems to be the only case of article 9.2 of the RGPD that could apply in the case examined.

Thus, for the purposes of interest, it should be borne in mind that the legal system establishes the obligation of citizens to contribute to the maintenance of public expenses, in accordance with their economic capacity through the tax system (art. 31.1 EC and arts. 1 et seq. LGT). The regulations provide that the Tax Administration, in particular, the AEAT, has powers in relation to the application of taxes, the exercise of sanctioning powers and the administrative review function (art. 5 LGT).

According to FJ 9 of STC 292/2000, which examines the essential content and limits of the fundamental right to the protection of personal data (art. 18.4 EC):

"Regarding the limits of this fundamental right, it is worth remembering that the Constitution mentions in art. 105 b) that the law will regulate access to administrative files and records "except for what affects the security and defense of the State, the investigation of crimes and the privacy of persons" (in relation to art. 8.1 and 18.1 and 4 CE), and on numerous occasions this Court has said that the prosecution and punishment of crime also constitutes an asset worthy of constitutional protection, through which others such as social peace and citizen security are defended. Assets equally recognized in the arts. 10.1 and 104.1 EC (to quote the most recent ones, SSTC 166/1999, of September 27, F. 2, and 127/2000, of May 16, F. 3 a); ATC 155/1999, of June 14). And the SSTC 110/1984 and 143/1994 considered that the equitable distribution of the support of public expenditure and control activities in tax matters (art. 31 EC) as goods and legitimate constitutional purposes capable of restricting the rights of art. 18.1 and 4 CE."

Thus, the EC makes clear the obligation of citizens to contribute to the fulfillment of a "legitimate constitutional purpose" which, as made clear by the TC in the cited sentence, can justify the limitation or restriction of the right to the protection of personal data.

In relation to the fulfillment of this constitutional purpose, STC 110/1984 (FJ 3), states the following:

"(...) To what extent can the Administration demand data relating to the economic situation of a taxpayer? There is no doubt that in principle he can do it. The simple existence of the tax system and the inspection and verification activity that requires its effectiveness demonstrates this. It is also clear that this right has firm constitutional support in art. 31.1 of the fundamental rule, (...).

(...).

Hence also the imposition of the legal duty to collaborate with the Administration in this fundamental aspect of the public good, (...)".

This same STC 110/1984 (FJ 8), in relation to the fundamental right to privacy and the application of Organic Law 1/1982, recalls that:

"(...) the actions authorized or agreed upon by the competent authority in accordance with the Law (art. 8.1) will not be generally considered illegal intrusions.

It is understood that the law can only authorize these intrusions by "imperatives of public interest", (...)."

In any case, it should be remembered that the regulatory framework (EC and the European Convention on Human Rights (ECHR)) admits the restriction, limitation or interference with fundamental rights (among others, the right to privacy and protection of personal data, eg art. 18, sections 1 and 4 EC), only when this measure is provided for by law and constitutes a necessary measure in a democratic society for the achievement of legitimate purposes or the protection of certain values, rights or interests of others ("limits test", according to the ECtHR's jurisprudence).

Still in relation to the scope of the duty of collaboration in Article 31.1 EC, STC 76/1990 establishes the following (FJ 3):

"This constitutional reception of the duty to contribute to the support of public expenses according to the economic capacity of each taxpayer constitutes a mandate that binds both the public powers and the citizens and affects the very nature of the tax relationship. For citizens, this constitutional duty implies, beyond the generic submission to the Constitution and the rest of the legal system that art. 9.1 of the fundamental rule imposes, a situation of subjection and collaboration with the Tax Administration in order to support public expenses whose indisputable and essential public interest justifies the imposition of legal limitations on the exercise of individual rights. For public authorities, this constitutional duty also entails specific requirements and powers in order to ensure the effectiveness of its compliance by taxpayers. (...)."

In short, all this leads to consider that article 9.2.g) RGPD could enable the processing of data, including data of special categories, that is necessary and proportionate to comply with the constitutional mandate of article 31.1 CE which , as has been explained, the constitutional doctrine considers "essential".

For all that has been said, given the regulatory framework studied and taking into account the jurisprudence cited, we cannot rule out that certain health data must be the subject of communication to the Tax Administration, as long as this can be justified based on the circumstances of the case and the corresponding regulatory provisions, and it is necessary for reasons of essential public interest, as could be, if applicable, the fulfillment of the tax obligations of certain persons (eg art. 31 EC), and whenever it is given compliance with the requirements of article 9.2.g) RGPD.

IV

As this Authority has decided in Opinions CNS 55/2018, CNS 2/2018, 21/2018, CNS 50/2017, CNS 47/2013, among others, which can be consulted on the website www.apd.cat, tax legislation imposes a general duty of collaboration with the tax administration, for the purposes, with the scope, and for the objectives provided for in this legislation, specifically, in Law 58/2003, of December 17, general tax (henceforth, LGT).

According to article 93 of the LGT:

"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.
In particular: (...).

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.

(...).”

This general duty of information and collaboration with the Tax Administration, may result in a person responsible (art. 4.7 RGPD) for the processing of personal data, such as a health center, having to provide certain personal information, including, if applicable, certain data of a certain patient who has been treated at the center.

Now, having said that, it is necessary to insist on the special protection that the law establishes with respect to health data (RGPD and patient autonomy legislation), specifically, with respect to the accesses that can occur to HC data . Thus, it should be borne in mind that article 5.1 of Law 21/2000 states that "every person has the right to respect the confidentiality of data that refer to their health. Equally, it has the right that no one who is not authorized can access it if it is not protected by the legislation in force" (art. 5.1). In the same sense, article 7 of Law 41/2002.

In this context, it should be borne in mind that the tax regulatory framework itself (art. 93.1 LGT) circumscribes the general obligation to those data and information that may have "tax significance."

As this Authority has highlighted in several Opinions, it 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 the taxable subjects whether or not they are aware of their tax obligations, as well as any information that the tax authorities consider useful or effective in the application of taxes, 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, information requests, to have tax significance, must refer to the fulfillment of own tax obligations or those of third parties (taxpayers).

Thus, according to the STS of December 15, 2014 (Fifth FJ): "(...) the duty of collaboration with the tax administration is imposed without more limit than the tax significance of the requested information [...] The significance tax has been defined by this Chamber in its judgments of June 21, 2012 (RJ 2012, 7488) (case report 236/2010) and November 3, 2011 (RJ 2012, 1842) (case report . 2117/2009) that refer to the previous one of November 12, 2003 (rec. of case. 1320/2002) noting that it is <<the quality of those facts or acts that may be useful to the Administration to find out if certain persons comply or not with the obligation established in article 31 of the Constitution to contribute to the support of public expenses in accordance with their economic capacity, and be able, if not, to act accordingly. And this utility can be direct (when the requested information refers to taxable events, that is, to activities, ownership s, acts or facts to which the law binds the levy) or indirect (when the requested information refers only to collateral data, which can serve as an indication to the Administration to look for imponable facts allegedly not declared or, simply, to guide después the inspection work - which, don't forget, can't

to reach absolutely all passive subjects, because it is materially impossible - to certain and determined persons (in the same sense, sentence of March 14, 2007 (RJ 2007, 3090) - case report 1320/2002)".

As agreed in CNS Ruling 55/2018 (FJ VI), actions to obtain tax information must be governed by guidelines of objectivity, as the jurisprudence has shown (STS of November 13 of 2018 (STS 1611/2018)).

With reference to the ways of obtaining information by the Tax Administration, the STS cited highlights the following (FJ Quart):

"(...) these objective guidelines are different according to the type of information that is being obtained, which translates into the distinction, jurisprudentially established with support in articles 94 and 95 LGT 2003, of these two modalities: information for supply, which operates according to the regulations established in terms of its forms and terms; and information by capture, which governs its individualized motivation in order to express the circumstances and facts that justify it, as well as its subjective individualization and its objective concretization."

Thus, the tax significance, which must be of a general nature - and also in the case at hand - to justify a request for information for tax purposes, must refer to a specific tax (tax, rate or special contribution).

The Resolution of December 4, 2018, of the Economic Court is illustrative Central Administrative Office (TEAC), in relation to the criteria applicable to medical insurance information requirements in inspection procedures, specifically:

"The requested information must have tax significance, being linked in the information requirements the requirement of motivation to that of tax significance.
So that, when the tax significance of a request does not ostensibly result from the file, it is required that it contains its express justification, so that the legal requirement is fulfilled."

As has been said, the query refers to a requirement of the AEAT that has not been provided together with the query, and its content is unknown.

In any case, given the information available, it seems that, beyond a general referral to the LGT, the request that the Tax Administration would have addressed to the Hospital, would not make any mention of the tax, the taxable event or the 'tax liability that could have been generated.

For the purposes of data protection regulations, and to be able to analyze whether the required data communication could be considered enabled (art. 6.1.c) and 9.2.g) RGPD, in connection with the LGT), it is necessary to determine whether the information required in each case has tax significance and whether its communication would be proportional to the objective pursued (in terms of the mentioned art. 9.2.g) RGPD).

Given the available information, and given the jurisprudential criteria on the motivation of the tax transcendence, it is difficult to determine whether this tax transcendence occurs (art. 93.1 LGT), if there is no information available on the tax obligation the compliance of the which would justify the communication of data, and about the relationship of the affected patient with this obligation.

For all of the above, from the perspective of personal data protection, the Hospital, as responsible for the patient's HC data (art. 4.7 RGPD), may request to

the Tax Administration complementary information to that of the initial request, in relation to the tax obligation that would justify the processing of data.

v

The third question asked refers to the possibility of the Hospital asking the Tax Administration for clarification on the reason and legal basis for the request "if the information requested by the AEAT does not include health data , nor other special categories of data".

Since the request made is not available, we cannot rule out that the Tax Administration has requested from the Hospital personal data of a patient, different from the data of special categories of data, such as the health data to which we referred

In the event that the Tax Administration requests from the Hospital patient data, for which it is responsible, other than health data, it must be borne in mind that the requirement of "tax significance", in the terms of the regulations and the jurisprudence studied, does not only apply when the information required by the tax administration includes certain types of personal data (such as the effects that interest, health data), but in relation to "all types of data, reports, antecedents and supporting documents" that can be requested in each case (art. 93.1 LGT).

Thus, in line with what has been pointed out regarding the communication of health data, from the perspective of data protection regulations, the Hospital, as responsible, could ask the Tax Administration for additional information to a initial request for personal data, also in cases where the information required does not constitute information of special categories of data.

Finally, in the fourth question asked, the Hospital states that if it is not necessary for the AEAT to provide any additional justification to the General Tax Law itself for the purposes of the Hospital providing the requested information, "we understand that the information we must send includes only the dates of visit or admission, without saying the reason or service for which the patient was visited, or this informati

As has been said, the consultation is not accompanied by a copy of the information request subject to consultation, so this Authority cannot determine whether the health information required by the Tax Administration and referring to a specific patient is information with "tax significance", in relation to a specific tax obligation that is unknown.

With the information available, this Authority cannot determine which personal information of the patient could have tax significance and, therefore, which data should be communicated to the Tax Administration, in particular, whether or not information on the reason for admission should be included or the service in which the patient was visited, among others.

In any case, we remind you of the principle of minimization, according to which personal data must be adequate, relevant and limited to what is necessary in relation to the purposes of the treatment (art. 5.1.c) RGPD), and which results from necessary application in any data processing and, for the purposes of interest, in the communication of personal health data, therefore, and unless the need to include the reason for the visit or admission in the case is justified concrete being analyzed, in principle it cannot be considered justified to deliver this information.

In accordance with the considerations made in this opinion in relation to the query raised, the following are made,

Conclusions

Question 1: The data to which the query refers (dates of medical visits, consultations, appointments or medical tests carried out and periods of hospitalization), are health data of the affected patient (art. 4.15 RGPD) and their communication, all and that the illness or the reason for the visit or summons is not specified, it is subject to the regime of article 9 of the RGPD.

Questions 2 and 3: The Hospital, as responsible for the patient's HC data (art. 4.7 RGPD), can request from the Tax Administration additional information to the initial request on the tax obligation that would justify the processing of data. Likewise, in the event that the required data is not special category data.

Question 4: Given the information available, this Authority cannot determine which personal information of the patient could have tax significance and, therefore, which data should be communicated to the Tax Administration.

Barcelona, September 20, 2019