CNS 60/2019

Opinion in relation to the consultation of a public law entity on the communication of corporate contact data to different departments of the Administration of the Generalitat

A letter from a public law entity (hereinafter, the entity) is presented to the Catalan Data Protection Authority in which it considers whether it can deliver to the Department of Business and Knowledge, to the General Directorate of Industry of this Department, and to the Department of the Presidency the corporate contact details for which it is responsible.

Having analyzed the request and seen the report of the Legal Counsel, the following is ruled.

I

(...)

II

The entity states, in its inquiry, that it is responsible for a database containing the corporate contact details of professionals and people who work in companies and organizations with which it interacts.

These data, he maintains, are treated under the legal basis of article 6.1.e) of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Protection of Data (hereinafter, RGPD), relating to the "fulfilment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment".

Specifically, the Law (...) to speed up administrative activity, creates the entity, as a public law entity of the Generalitat de Catalunya that acts subject to private law, with its own legal personality, with the mission of 'promote the competitiveness and growth of the Catalan business fabric, through the promotion of innovation, business internationalization and the attraction of investments.

The entity declares that the Department of Economy and Knowledge, to which the entity is attached, as well as the General Directorate of Industry of this Department, and also the Department of the Presidency of the Administration of the Generalitat have requested on several occasions the transfer of this data, for the purpose of being able to carry out the respective functions within their own competences.

Next, it considers whether this transfer could be understood to be covered by the provisions of article 19.3 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD), according to the which:

> "Those responsible or in charge of the treatment referred to in article 77.1 of this organic law may also treat the data mentioned in the two previous sections when it derives from a legal obligation or is necessary for the exercise of their powers."

Likewise, it makes some considerations about the fulfillment of the duty to inform those affected about the processing of their data in the event that the transfer is considered lawful.

These issues are examined in the following sections of this opinion.

III

At the outset, remember, with regard to the personal information that would be the subject of transfer, that, as was made clear in Opinion 40/2017 (FJ II), issued on October 3, 2017 by this Authority in relation to a query made by the entity regarding the submission of certain professional data to the data protection regulations and the legitimation for its use (available on the Authority's website, http://apdcat.gencat.cat), the full applicability of the RGPD, which took place on May 25, 2018, has meant that the processing of contact data of natural persons who provide services to legal entities and of individual entrepreneurs remains subject to the legislation of Protection of personal information.

The RGPD extends its scope of protection to personal data understood as "all information about an identified or identifiable natural person ("the interested party")" (article 4.1).

By virtue of the principle of primacy and the direct effect of the Regulations of the European Union, the internal provisions of the Member States that are opposed to what is established by the RGPD have been displaced by its provisions.

This has been the case of the exclusions provided for in the Regulation implementing the (repealed) Organic Law 15/1999, of December 13, on the protection of personal data, approved by Royal Decree 1720/2007, of December 21 (in hereinafter, RLOPD), in its articles 2.2 and 2.3:

> "2. This Regulation will not be applicable to the processing of data referring to legal entities, nor to files that are limited to incorporating the data of the natural persons who provide their services in those, consisting only of their name and surname, the functions or positions performed , as well as the postal or electronic address, telephone and professional fax number.
>
> 3. Likewise, the data relating to individual entrepreneurs, when they refer to them in their capacity as merchants, industrialists or shippers, will also be understood to be excluded from the regime of application of the protection of personal data."

It must, therefore, be borne in mind that any treatment carried out on this data, understood as "any operation or set of operations carried out on personal data or sets of personal data, either 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, deletion or destruction" (Article 4.2) RGPD), will remain subject to the legislation on the protection of personal data.

IV

The RGPD establishes that all processing of personal data (in this case, the transfer of the data referred to in the query) must be lawful, fair and transparent (Article 5.1.a)).

In order for the processing to be lawful, the data must be processed "with the consent of the interested party or on some other legitimate basis established in accordance with law, either in

the present Regulation or by virtue of another Law of the Union or of the Member States to which the present Regulation refers, including the need to fulfill the legal obligation applicable to the person responsible for the treatment or the need to execute a contract to which he is a party the interested party or with the purpose of taking measures at the request of the interested party prior to the conclusion of a contract" (consideration 40 RGPD).

Article 6.1 of the RGPD regulates the legal bases on which the processing of personal data can be based. Specifically, section e) provides that the treatment will be lawful if "it is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment".

Article 6.3 of the RGPD establishes that the basis of the treatment indicated in this article 6.1.e) must be established by the Law of the European Union or by the law of the Member States that applies to the person responsible for the treatment.

The reference to the legitimate basis established in accordance with the internal law of the Member States referred to in this article requires that the rule of development, when dealing with the protection of personal data of a fundamental right, has the status of law (Article 53 EC), as Article 8 of the LOPDGDD, already cited, has come to recognize.

The Department of Economy and Knowledge (including the General Directorate of Industry) and the Department of the Presidency of the Administration of the Generalitat ask the entity, which depends on this same Administration, for the contact details that it has with respect to people who provide their services in entities with which it is related and also with respect to individual entrepreneurs and other professionals, for the purposes of being able to carry out the respective functions within the powers that each of these departments has legally attributed.

Taking into account these manifestations, it cannot be ruled out that, in the present case, the legal basis of Article 6.1.e) of the RGPD, to which reference has been made, could protect the purported transfer of data, in to the extent that there is a rule with the rank of law that attributes to the aforementioned departments competences on a matter for the exercise of which it is necessary to have this type of personal information.

In any case, it must be borne in mind, as pointed out in the consultation, that the LOPDGDD includes a series of cases in which certain data treatments, as long as certain requirements are met, will be considered lawful (Title IV).

One of these treatments is that relating to the treatment of contact data, of individual entrepreneurs and liberal professionals, regarding which article 19 establishes that:

> **"1. Unless proven otherwise, the treatment of contact data and, where appropriate, those relating to the function or position performed by individuals who provide services in a legal entity provided that the following requirements are met:**
>
> **a) That the treatment refers only to the data necessary for your professional location.**
>
> **b) That the purpose of the treatment is solely to maintain relations of any kind with the legal entity in which the affected party provides its services.**
>
> **2. The same presumption will operate for the treatment of data relating to individual entrepreneurs and liberal professionals, when they refer to them**

only in that condition and they are not treated to establish a relationship with them as physical persons.

3. Those responsible or in charge of the treatment referred to in article 77.1 of this organic law may also treat the data mentioned in the two previous sections when it derives from a legal obligation or is necessary for the exercise of their powers."

Among the data controllers included in article 77.1 of the LOPDGDD, to which this article 19 of the LOPDGDD expressly refers, we find the administrations of the autonomous communities, as well as their public bodies and public law entities, among others

In view of this, it can be said that the communication of data intended in the present case between the entity and the aforementioned departments of the Administration of the Generalitat would find protection in the LOPDGDD itself, as long as the established requirements are met in this article 19, that is:

a) That the communication only includes the contact details necessary for the professional location of the affected persons (natural persons who provide services in a legal entity and individual entrepreneurs).

b) That the purpose of the communication is to maintain relations of any kind with the legal entity in which the affected person provides their services or, in the case of individual entrepreneurs, to address them in the framework of their business activity (not to enter into a relationship as physical persons).

c) That the communication is framed in the exercise of the powers that the assignees have attributed by the legal system.

In the case at hand, it should be borne in mind that, from the information available, it seems that the communication would include the corporate contact database of professionals and people who work in companies and organizations with which the entity interacts .

Point out that the data treatments carried out by the public administration are subject to the principles established in the RGPD, among them, the principle of data minimization (article 5.1.c)), so they can only be considered legitimate data treatments that are adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated.

In accordance with this, the authorization conferred by article 19.3 of the LOPDGDD would only operate with respect to the data strictly necessary for the professional location of the affected persons, that is name, surname, postal or electronic address, telephone and number of professional faxes and, where appropriate, the position held, but not any other type of personal information that may be included in this database.

So, if, for the exercise of a public function, it is necessary for the competent department to be able to address the set of people referred to in said database, their communication by the entity, limited to the contact data indicated above, would conform to this principle of minimization and, therefore, could be considered lawful.

Conversely, if it were only necessary to address a certain employer or a certain company or entity, through the person of reference, by virtue of the principle of minimization, it would only be appropriate - and, therefore, lawful - to communicate said contact details

of these specific people (not of the set of people that make up the database).

In this sense, Recital 31 of the RGPD makes it clear: "Public authorities' communications requests must always be submitted in writing, in a motivated and occasional manner, and must not refer to the entirety of a file or give rise to the interconnection of several files. The treatment of personal data by said public authorities must be in accordance with the regulations on data protection that are applicable depending on the purpose of the treatment".

It would also be necessary, therefore, for the departments that request the communication or transfer of the data to motivate, in their request addressed to the entity, the purpose to which the processing of this data responds, within the powers attributed to them , which must be compatible with the purpose for which the data were initially collected, as established in article 6.4 of the RGPD. It is up to the entity to check this compatibility between purposes.

Point out that, once the data has been obtained, its treatment for a purpose other than that which justified the communication from the entity should, in any case, have the concurrence of one of the legal bases established in the data protection legislation.

It should also conform to what is established in article 155 of Law 40/2015, of October 1, on the legal regime of the public sector, in its wording given by Royal Decree Law 14/2019, of 31 October, whereby urgent measures are adopted for reasons of public security in matters of digital administration, public sector procurement and telecommunications, acc

"Article 155. Data transmissions between Public Administrations.

1. In accordance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, relating to the protection of individuals with regard to the processing of personal data and the freedom circulation of these data and by which Directive 95/46/CE is repealed and in Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights and its development regulations, each Administration must facilitate the access of the remaining Public Administrations to the data relating to the interested parties in their possession, specifying the conditions, protocols and functional or technical criteria necessary to access said data with the maximum guarantees of security, integrity and availability.

2. In no case may further processing of the data be carried out for purposes incompatible with the purpose for which the personal data were initially collected. In accordance with the provisions of article 5.1.b) of Regulation (EU) 2016/679, the subsequent processing of personal data for archiving purposes in the public interest, scientific and historical research purposes will not be considered incompatible with the initial purposes or statistical purposes.

3. Apart from the case provided for in the previous section and as long as the special laws applicable to the respective treatments do not expressly prohibit the further treatment of the data for a different purpose, when the Public Administration transferring the data intends the further treatment of the same for a purpose that he deems compatible with the initial purpose, he must communicate it beforehand to the ceding Public Administration so that it can verify said compatibility. The ceding Public Administration may, within ten days, object with reason. When the transferring Administration is the Administration

General of the State may in this case, exceptionally and in a motivated manner, suspend the transmission of data for reasons of national security in a precautionary manner for the time strictly indispensable for its preservation. As long as the transferor Public Administration does not communicate its decision to the transferee, it will not be able to use the data for the intended new purpose.

The cases in which the treatment for another purpose other than that for which the personal data were collected are provided for in a rule with the rank of law in accordance with the provisions of article 23.1 of the Regulation (EU) 2016/679."

v

The entity makes some considerations in its consultation on compliance with the duty to inform those affected about the processing of their data in the event that the transfer is considered lawful.

He points out that it would be up to the transferee departments to inform the interested parties under the terms of Article 14 of the RGPD. At the same time, it plans to carry out two actions: on the one hand, to inform these interested parties, prior to the transfer of their data, of this communication; on the other hand, to adapt the current informative clauses for the purposes of informing future interested parties about said transfer of data.

The obligation to inform interested parties about the circumstances relating to the processing of their personal data rests with the data controller (Article 12 GDPR).

Therefore, it would be up to the entity to deliver to the interested persons, at the time when their data is obtained, the set of information referred to in article 13 of the RGPD, which includes that relating to " the recipients or the categories of recipients of personal data, in their case" (section 1.e)), which should include information on the communications that are planned to be made.

The recipient should be understood as "the natural or legal person, public authority, service or other body to which personal data is communicated, whether or not it is a third party. (...)" (Article 4.9) RGPD).

In the present case, it must be taken into account that, at the time the data was collected, its communication or transfer to certain departments of the Administration of the Generalitat for the exercise of the powers attributed to them (recipients, therefore, of said information) was not foreseen, so the entity did not inform the affected people of this end.

The entity proposes to adapt the current information clauses for the purposes of informing the persons with whom, from now on, the entity relates in the exercise of their functions, about the aforementioned transfer of data to these departments. This action is considered absolutely necessary, in order to properly fulfill this duty of information to the interested party.

Point out that, in order to facilitate this compliance, the LOPDGDD (article 11) has provided for the possibility of providing the interested party with the required information by layers or levels.

This method consists in presenting "basic" information (summary information) at a first level, so that you can have a general knowledge of the treatment, indicating an electronic address or other means where it can be accessed easily and

immediately to the rest of the information, and, at a second level, offer the rest of the additional information (detailed information).

If you opt for this route, you must take into account that said "basic" information must include the identity of the person responsible for the treatment, the purpose of the treatment and the possibility of exercising the habeas data rights established in articles 15 to 22 of the

Also that, if any data were not obtained from the interested party, the basic information should include the categories of data subject to treatment and the source from which these personal data come (article 11.3 LOPDGDD).

Regarding these issues, it is recommended to consult the Guide for the fulfillment of the duty to inform the RGPD available on the Authority's website.

For their part, the departments, assignees of the data available to the entity, once they obtain this data, will become responsible for its treatment, so it will be up to them to inform the affected people in the terms established in article 14 of the RGPD, relating to the information that the person in charge must provide when, as in the present case, the data has not been obtained from the interested party.

The said obligation to inform the interested parties would not be applicable but if any of the cases established in section 5 of this article 14 of the RGPD were met, such as, that the interested person already has the legally required information (letter a)) or that the obtaining or communication is expressly established by the law of the Union or of the member states (letter c)).

As seen above, in the present case the transfer of data would be considered legitimate in view of the provisions of article 19.3 of the LOPDGDD. However, it cannot be said that this provision of the LOPDGDD expressly provides for the communication of data examined. Therefore, it does not seem that the exception of article 14.5.c) of the RGPD could be considered applicable in the present case.

Nor does it seem that the exception of article 14.5.a) of the RGPD could be considered applicable, given that, although the entity intends to inform the persons interested or affected by the transfer of the fact that their data will be communicated, this does not seem to imply that these people already have all the legally required information about the processing of their data that will be carried out by the transferees.

Therefore, once the data has been obtained, the departments, as responsible, should inform the interested persons of the ends referred to in article 14 of the RGPD within a reasonable period but, in any case, given that the data would be used to communicate with them, before or in the first communication with these people (Article 14.3.b) RGPD).

In accordance with the considerations made so far in relation to the query raised, the following are made,

Conclusions

The communication of the contact database available to certain departments of the Government of the Generalitat would be protected by article 19.3 of the LOPDGDD, as long as the requirements provided for in this article are met and respected the principle of data minimization, in the terms indicated in this opinion.

Without prejudice to the fact that it is up to the entity to inform about the recipients of the personal data for which it is responsible, it would be up to the departments, transferees of the data, to inform the people affected by this communication about the aspects related to the treatment of their data established in the Article 14 of the RGPD.

Barcelona, January 27, 2020