Report in relation to the Draft Decree for the implementation of Law 14/2017, of July 20, on the guaranteed income of citizenship

The Draft Decree for the implementation of Law 14/2017, of 20 July, on the guaranteed income of citizenship, is presented to the Catalan Data Protection Authority, so that the Authority issues its opinion on the matter.

The Draft Decree consists of a preamble, a total of sixty-four articles divided into eleven chapters, an additional provision, two transitional provisions, a repealing provision and two final provisions. It is accompanied by the General Report, the Impact Assessment Report and the Return Report of the previous public consultation carried out.

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

Legal foundations

I

(...)

II

The purpose of the draft decree being examined is to "deploy Law 14/2017, of July 20, on the guaranteed citizenship income" (article 1).

The guaranteed income of citizenship is "a social benefit of an economic nature and economic perception that is configured as a guaranteed benefit of subjective law and whose purpose is to develop the promotion of the person and their empowerment and to overcome the conditions that have due to needing this provision" (article 2.1).

It is granted to those people who, meeting the legally established requirements (article 7 Law 14/2017), which are specified in article 11 of the Project, are at risk of poverty or social exclusion, for the purposes of promoting their autonomy and active participation in society (article 1).

This is an economic benefit from which people who are part of the same nucleus as members of the respective family unit can be beneficiaries and which responds to their particular conditions and needs (article 10). Thus, although it is granted based on their income (article 8.3), specific personal and family situations are also taken into account: being unemployed and without resources, being a pensioner or recipient of benefits and other subsidies, treating from single-parent families, have refugee status or be a claimant for international protection, be a victim of gender-based violence, have a disability, be in a situation of special need or urgency, etc. (articles 11 and 13). Even, on occasion, the existence of addictions or accredited mental illnesses are also taken into account (Article 12).

In view of these provisions, it is clear that the granting of this benefit will involve the processing of a set of personal information, even data that is particularly protected or deserving of special protection, by the different agents involved in its processing, which will have to comply with the provisions of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD).

In this sense, the explicit references made to the data protection regulations throughout the text of the Project, specifically in article 44 and Chapter IX, should be positively evaluated, without prejudice to the considerations that will be made later about it

Having said that, those provisions of the Project that have a particular impact on the fundamental right to the protection of personal data are examined below, the perspective from which this report is issued.

III

Article 28 of the Project specifies the agents responsible for the management of the guaranteed citizenship income and the functions that correspond to them, following the provisions established in article 22, sections 1 to 3, of Law 14/2017. Thus, it corresponds:

- **To the public service in matters of employment: the reception of requests for benefits, the preparation of the agreement of the labor insertion plan, and the guidance and monitoring of this plan.**
- **To the general management competent in matters of guaranteed citizenship income: the financial and administrative management of the benefit, which includes, among other functions, the resolution, suspension, termination, modification, extension and payment of the benefit**
- **To public services in terms of social services: the preparation and agreement of the inclusion plan social, and the orientation and monitoring of this plan.**

For its part, article 30 of the Project reproduces what is established in article 22.5 of Law 14/2017 in relation to the Technical Body, which is responsible for monitoring and evaluating individual plans, active policies and inclusion services, as well as acting as a team responsible for the coordination and functional improvement of the different units involved in the provision.

From these forecasts - and, especially, from those relating to the procedure for recognizing the benefit (Chapter VI) - it is inferred, for the purposes that concern them, that the exercise or development of the functions by each of these agents involved in the management of the guaranteed income of citizenship, it will necessarily involve the communication between them of personal information of the beneficiaries of the benefit (holder and members of the family unit).

From the point of view of the protection of personal data, it is necessary to ensure that any of these communications of information, apart from having sufficient legitimacy, is adapted, among others, to the principles of limitation of the purpose (article 5.1.b) RGPD) and data minimization (article 5.1.c) RGPD).

According to these principles, personal data must be collected for specific, explicit and legitimate purposes, their subsequent treatment not being possible in a way incompatible with these purposes (limitation of the purpose), and must be adequate, relevant and limited to what is necessary to achieve these until they justify their treatment (data minimization).

It must be taken into account, therefore, that these communications can only be considered appropriate to the data protection regulations to the extent that they are limited to the personal data that in each case are required for the fulfillment of the functions attributed to them, in accordance with Law 14/2017, each of these units or services of the Administration of the Generalitat in relation to the management of the guaranteed citi

Likewise, it must be borne in mind that this personal information to which you have access may not be used for other purposes incompatible with that which justifies its access in each case.

Point out, at this point, that the RGPD establishes, in its article 6.4, and aside from the cases in which the change of purpose can be based on the consent of the interested party or in a rule with the rank of law, a series of aspects to be taken into consideration when assessing the possible compatibility between different purposes. In particular, you must bear i

> "a) any relationship between the purposes for which the personal data have been collected and the purposes of the subsequent treatment provided; b) the context in which the personal data have been collected, in particular with regard to the relationship between the interested parties and the controller; c) the nature of personal data, in particular when special categories of personal data are treated, in accordance with article 9, or personal data relating to criminal convictions and infractions, in accordance with article 10; d) the possible consequences for the interested parties of the planned subsequent treatment; e) the existence of adequate guarantees, which may include encryption or pseudonymization."

IV

Article 29 of the Project, in accordance with article 21.1 of Law 14/2017, provides for the possible participation of local administrations and third sector entities, duly accredited, in the processing, management, execution and the monitoring of job placement and social inclusion plans, through the web platform for managing the guaranteed citizenship income, as well as other forms of collaboration that may be established.

In this regard, the need to define the conditions under which these collaborating entities will participate in the aforementioned actions and the consequences of this participation from the point of view of data protection is highlighted.

Thus, it must be borne in mind that if the participation of these collaborators involves the processing of personal data on behalf of the Administration of the Generalitat, responsible for the resolution of the right to the benefit (article 21 Law 14/2017), a processing contract should be formalized with each of them in the terms established in article 28.3 of the RGPD. Otherwise, the communications of personal data that may take place there, apart from having sufficient legitimacy, must comply with the principles of purpose limitation and data minimization, already mentioned.

v

Chapter V of the Project develops the coordination of the actions that derive from the application of the guaranteed citizenship income.

Of the forecasts contained therein, Section 2a is particularly noteworthy, dedicated to the first of the four levels at which the coordination model must be structured in this area.

In accordance with article 33 of the Project, this first level, called technical intervention of a basic nature, is part of the referring professionals of basic social services, the Public Employment Service of Catalonia, the Technical Body, the collaborating entities of the employment system and the accredited entities that develop the follow-up of the labor insertion and social inclusion plans.

According to article 35 of the Project, these are specific actions at this level, at least: share information on all support actions; keep the information and changes in the personal and/ or economic situation of the members of the family unit up to date; facilitate the monitoring and supervision of files; and allow the transfer of files between the services involved.

As can be seen from article 34 of the Project, all these actions will be carried out through the "web platform for managing the guaranteed income of citizenship", notwithstanding that other forms of collaboration may be established, depending on the complexity of each case.

In view of these forecasts, it is appropriate to consider the need to, among other actions in the field of security, adopt appropriate mechanisms that allow the correct identification and authentication of the users of this management platform, for the purposes of guaranteeing, as as required by the RGPD, that no unauthorized processing will take place (Article 5.1.f)

To this end, point out that, although, in general, the use of a user and a password is considered an adequate security measure, it could be convenient in the present case to establish more robust mechanisms (for example , based on electronic certificates), in attention to the risks that may arise from the processing of the personal information necessary to manage the guaranteed citizenship income - which, remember, includes data deserving of special reserve or confidentiality and, even in occasions, special categories of data- through this platform.

It should be noted, at this point, that 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, of personal data protection, approved by Royal Decree 1720/2007, of December 21, but by determining, following a prior risk assessment, which security measures are necessary in each case (Recital 83 and Article 32) .

Therefore, it is necessary to carry out this risk analysis prior to the launch of said platform in order to establish the appropriate technical and organizational security measures to safeguard the right to data protection of the recipients of the benefit (holder and members of the family unit).

Point out, regarding the establishment of organizational measures, that a comprehensive security model also requires the adoption and implementation of training measures for the personnel who must process personal data.

Also agreeing that, in the case of public administrations, the application of security measures will be marked by the criteria established in the National Security Scheme, approved by Royal Decree 3/2010, of January 8, which, currently , is being reviewed.

In this regard, Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereafter LOPDGDD), provides that:

> **"First additional provision. Security measures in the public sector.**

1. The National Security Scheme will include the measures that must be implemented in case of personal data processing, to avoid its loss, alteration or unauthorized access, adapting the criteria for determining the risk in the data processing to the established in article 32 of Regulation (EU) 2016/679.

2. The responsible persons listed in article 77.1 of this organic law must apply to the processing of personal data the security measures that correspond to those provided for in the National Security Scheme, as well as promote a degree of implementation of equivalent measures in the companies or foundations linked to them subject to private law.

In cases where a third party provides a service under a concession, management assignment or contract, the security measures will correspond to those of the public administration of origin and will be adjusted to the National Security Scheme."

Point out that, among those responsible for the processing included in article 77.1 of the LOPDGDD, to which this DA1a expressly refers, we find the administrations of the autonomous communities, as well as their public bodies and public law entities, among others Therefore, it must be borne in mind that, in the present case, the application of the security measures established in the National Security Scheme will be mandatory.

VI

In accordance with article 42 of the Project, the procedure for recognizing the benefit is initiated at the request of the interested person, who must be accompanied by the documentation that is relevant to certify compliance with the requirements of 'access to the provision, or permanence in it, established in article 11 of the Project.

Article 43 of the Project contains several provisions on the way in which people applying for the benefit must provide this documentation.

While it is understood that these forecasts follow what is established in article 28 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPACAP), it should be noted that the wording used is not clear enough and could lead to confusion.

Article 28 of the LPACAP regulates the regime of access by public administrations to data and documents held by the same administration or other administrations, in order to comply with the right of citizens not to contribute to the procedure those documents that they are held by the administrations, either because they have been drawn up by the administration itself (section 2) or because they have been previously provided by the interested party to any public administration (section 3).

It must be taken into consideration that, from the point of view of data protection, this precept of the LPACAP establishes an authorization for public administrations to access or consult these documents when they are necessary for the procedure in which the citizen is interested and as long as you have not objected or that it is data for which express consent is required for its treatment (for example, in the case of the data provided for in article 9 of the RGPD).

Section 1 of article 43 of the Project states that requests "must only be accompanied by documentation (...) that has not been drawn up by another public administration or that is no longer in its possession of the public administrations (...), given that, of course, being in their power, the administration responsible for the management of the benefit will b

by itself, based on the mentioned qualification of article 28 of the LPACAP, and it will not be necessary for the applicant to provide it.

However, it must be borne in mind that this consultation will only be possible if the person requesting it does not object to it being carried out or, in the case of information that, in order to be consulted, it is required to have their express consent, the requesting person gives it. In the event that this happens (opposes or does not authorize), it will be necessary for the applicant to provide the relevant supporting documentation, since otherwise it will not be possible to process their application. Not only, therefore, in the event that the documentation is not in the possession of the administration, referred to in section 2 of article 43. Therefore, it would be advisable to review these sections to clarify these aspects.

Section 5 of article 43 of the Project provides that "if necessary, the applicant, at the time of submitting the application, must authorize the Acting Administration so that it can verify internally the essential documentation for the assessment of the application whenever and wherever possible".

These forecasts seem to refer to obtaining, when appropriate, the express consent mentioned. It would be convenient, however, to revise the wording used, especially the terms "verify internally", to clarify that the applicant gives his consent to consult certain data held by other bodies of the same administration or of other administrations, if the what is intended is this.

And it would also be advisable to review the wording used in section 8 of article 43 of the Project, given that it is not clear whether it refers to obtaining express consent when appropriate or it provides that it is necessary to obtain, in general, the consent of the applicant.

The aforementioned section 8 establishes that "in particular, public administrations will use electronic means to collect the aforementioned information provided that, in the case of personal data, the consent of the interested parties is obtained in the terms established by the regulations of Personal data protection in force, unless there are restrictions in accordance with the regulations applicable to the data and documents obtained.
Said consent may be issued and obtained by electronic means."

As has been said, the authorization for the consultation of the documents by the administration responsible for the management of the benefit will be given by the express consent of the interested party in cases where it is necessary, in accordance with the applicable legal provisions. Outside of this case, the authorization for communication (or consultation) will not derive from the consent of the affected person but directly from the law, in this case of the LPACAP itself, which provides for this communication to make possible the exercise of 'a public authority such as that of verifying the facts and circumstances presented by the interested parties in their requests or writings (Article 6.2.e) RGPD), unless the affected person expressly opposes it.

Therefore, a provision like that of this section 8, in the sense of always requiring the consent of the person affected, would go against the provisions of the LPACAP and which is contained in this article 43 of the Project. If you are referring, however, to the need to have the express consent of the person affected in those cases where the applicable special law requires it, the wording used should be modified to clarify this.

Having said that, make it clear that in the collection of personal information, in this case through the standardized application form (article 42.3) and the appropriate supporting documentation (article 43.3 and 4), it is important to respect the principles of transparency (articles 5.1.a) RGPD) and data minimization (Article 5.1.c) RGPD).

Thus, it must be taken into consideration that, in application of the principle of transparency, it will be necessary to provide the affected person with information on the conditions and circumstances relating to the processing of the data, in a concise, transparent manner, in the application form for the benefit , understandable and easily accessible (Article 12 RGPD).

Specifically, it will be necessary to provide all the information referred to in article 13 of the RGPD, that is:

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 representative, if applicable. c) The purposes of the treatment for which the personal data are intended and the legal basis of the treatment.

d) The legitimate interest pursued by the person in charge or by a third party, when the treatment is based on this legitimate interest. e) The recipients or the categories of recipients of the personal data, if applicable. f) The forecast, if applicable, of transfers of personal data to third countries and the existence of a decision of adequacy or adequate guarantees, and the means to obtain a copy.

g) The term during which the personal data will be kept or, when it is not possible, the criteria used to determine this. h) The existence of the right to request from the data controller access to the personal data relating to the interested party, to rectify or delete them, to limit the processing and to oppose it, as well as the right to data portability. i) When the treatment is based on consent, the right to withdraw it at any time, without this affecting the legality of the treatment based on consent prior to withdrawal.

j) The right to present a claim before a control authority. k) 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 doing so. l) The existence of automated decisions, including the creation of profiles. m) If it produces legal effects on the interested party or affects him significantly, or affects special categories of data, it must contain significant information about the logic applied and about the expected consequences of this treatment for the interested party.

It should be noted that, in order to facilitate the fulfillment of this duty of information, the LOPDGDD (article 11) has provided for the possibility of delivering this information to the affected by layers or l

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 the said "basic" information in the present case must include the identity of the person responsible for the treatment, the purpose of the treatment, the possibility of exercising habeas data rights (established in the articles 15 to 22 RGPD), as well as the fact that the data will be used for the preparation of labor and/or social profiles (article 11.2 LOPDGDD).

It is also necessary to take into account, in view of what is established in article 43.1 of the Project, that if certain data are not obtained from the person requesting the benefit, but directly

from third parties (for example, from the State Tax Administration Agency), it will be necessary to inform more about (article 11.3 LOPDGDD):

a) The categories of data subject to treatment. b) The source from which these personal data come.

And, as has been made clear before, it will also be necessary to inform the requesting person of the possibility to object to this consultation or collection of data from third parties, as well as of the consequences that derive from it (if you object, you must provide the necessary supporting documentation). For this purpose, a box could be included in the request for the benefit that you can mark if you wish to object to this query being made.

With respect to the principle of data minimization (Article 5.1.c) RGPD), which has already been referred to in section III of this report, we value positively that in the text of the Project it has been expressly provided that "the personal data contained in the administrative file and the corresponding necessary reports must only be those essential to resolve the initial request for the financial benefit of the guaranteed income of citizenship and follow it up" (article 44.1) .

VII

Article 44.2 of the Project (with regard to section 1 has already been mentioned in the previous section) provides that "the public administrations, as well as the collaborating entities and the coordinating bodies must guarantee the confidentiality of the personal data contained in the files instructed to resolve the requests for the economic benefit of the guaranteed income of citizenship, in accordance with what is established by the current legislation on the protection of personal data and the right to privacy."

Beyond positively valuing this provision, make it clear that the obligation to maintain secrecy regarding personal data imposed by the data protection regulations on any person who has access to it, in this case in the exercise of the functions attributed to them in relation with the management of the guaranteed income of citizenship, subsists even after the end of the relationship they maintain with the administration or collaborating entity (article 5.1.f) RGPD and article 5 LOPDGDD).

VIII

Article 45.3 of the Project provides, as part of the instruction for the recognition procedure of the benefit, that "once the file is received, the Technical Body may require the applicant or other institutions or public entities and private any other data, document or report that it deems necessary to complete the file".

These forecasts seem to be related to what is established in article 28 of the LPACAP, which has been mentioned in section VI of this report.

It should be noted that, as stated in the wording of article 28 of the LPACAP, this article is only applicable to entities that, in accordance with article 2.3 of the same law, are considered public administration , that is, the State Administration, the administrations of the autonomous communities and local bodies, as well as the public law bodies linked to or dependent on these administrations. Related or dependent private law entities are only subject to the provisions of this Law to the extent that they exercise administrative powers.

It must be taken into consideration, therefore, that the consultation or collection of data from institutions or entities that do not have the consideration of public administrations referred to in this article 45.3 of the Project cannot be based on the authorization provided for in article 28 of the LPACAP, being, therefore, necessary the concurrence of another legitimating legal basis (article 6.1 RGPD).

IX

Chapter IX of the Project is expressly dedicated to the processing of personal data.

Article 60, relating to "data integration", reproduces what is established in article 16, letters a) ib), of Law 14/2017, according to which:

> **"a) The competent public administrations in each case must provide the personal data necessary to certify residence and cohabitation, to assess the situation of need and to certify the other circumstances that are decisive for accessing each provision and to maintain it, within the framework of current regulations on the protection of personal data.**
>
> **b) The entity or the body managing the benefits can provide personal data, necessary for the management of the files, to the Tax Administration, the social security management entities and other public entities, for tax purposes and control of benefits."**

With regard to the provisions of letter a), agree that the data communications established therein will only comply with data protection legislation to the extent that they are related to the provisions of article 28 of the 'LCAPAP. That is to say, these communications of data must be the result of the application of the mechanism established in this article 28 and which allows the competent administration of the management of the benefit to consult or compile data that are in the power of the public administrations .

Therefore, the following wording is suggested:

> **"a) For the purposes of complying with article 43 of this decree, the competent public administrations in each case must provide the personal data necessary to certify residence and cohabitation, in order to assess the situation of need and to certify the other circumstances that are decisive for accessing each benefit and for maintaining it."**

At this point, remember that the personal data that can be accessed (or that these administrations must communicate) in use of the authorization conferred by article 28 of the LPACAP must only be those strictly necessary to achieve the purpose pretense, this is to verify the facts and circumstances presented by the person requesting the benefit in their application (article 5.1.c) RGPD).

With regard to the communications of personal data referred to in letter b) of this article, since a priori they would respond to the fulfillment of a legal obligation applicable to the responsible administration established by a rule with the rank of law, it must be said which would count on the legitimacy of article 6.1.c) of the RGPD.

X

Article 16 of Law 14/2017 states (letter c)) that "a single personal data file must be created by regulation for all social benefits of an economic nature, including guaranteed citizenship income".

Despite this reference to the creation of personal data files in Law 14/2017 - carried out in accordance with the provisions of the (repealed) Organic Law 15/1993, of December 13, on the protection of personal data (LOPD), it must be taken into account that the full applicability of the RGPD, which had took place on May 25, 2018, has meant the removal of the need to formally create, modify or delete the files, and to notify them to the data protection register of the control authorities, which was foreseen by the aforementioned LOPD.

In development of this provision of article 16.c) of Law 14/2017 and, it is understood, also with the will to adapt to this new reality, article 61 of the Project establishes the creation, not from the file, but from a Register of personal data processing activities, in the following terms:

> **"By means of this Decree, a register of personal data processing activities is created for all social benefits of an economic nature, including the guaranteed citizenship income.**
>
> **This record of treatment activities is managed by the Catalan Data Protection Authority, in accordance with its specific regulations."**

Certainly, the RGPD has entailed the establishment of new obligations for those responsible and those in charge of processing, 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, if applicable, of the co-person in charge, as well as of the data protection delegate, 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 of Work, Social Affairs and Families of the Government of the Generalitat 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 RGPD. It is also true that one of these treatment activities described in the RAT will have to be the management of the guaranteed citizenship income together with the rest of the treatments carried out by the person in charge.

However, having said that, it must be taken into account that the RGPD does not require that in the regulation of a certain processing operation or activity (as in this case it would be the regulation of the guaranteed income of citizenship) 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 Draft Decree.

Otherwise, if it is considered appropriate to maintain the provisions on the RAT, it must be taken into account that its management corresponds to the person in charge or person in charge of the treatment and not to the control authority in question, this without prejudice to the fact that, in if the APDCAT requests it, it must be made available (Article 30.4 RGPD). Therefore, the second paragraph of this article 61 should be deleted.

For all this the following are done,

Conclusions

Having examined the Draft Decree for the implementation of Law 14/2017, of July 20, on the guaranteed income of citizenship, it is considered adequate to the provisions established in the corresponding regulations on the protection of personal data, as long as they are taken into account take into account the considerations made in this report.

Barcelona, February 20, 2019