PD 7/2019

Report in relation to the draft law to promote economic activity in a digital environment

The draft law for the promotion of economic activity in a digital environment is presented to the Catalan Data Protection Authority, so that the Authority issues its opinion on the matter.

The Draft Law consists of a preamble, a total of forty-four articles grouped into three titles, five additional provisions, eight transitional provisions, a repealing provision, three final provisions and an annex.

Having examined this draft, and in accordance with the report of the Legal Counsel, I issue the following report.

Legal foundations

I

(...)

II

The purpose of the draft law being examined (article 1) is to "promote economic activity and job creation in a digital environment" and, to that effect, "establishes the principles, criteria and instruments that must be applied by the public administrations of Catalonia to make possible a more agile and efficient relationship with the holders of economic activities".

According to article 3 of the draft law, "owner of an economic activity" is understood to mean "the person who, through a legal title, a valid recognized document, whether public or private, links an economic activity to a natural or legal person, public or private, and enables it to be exploited whether for profit or not".

This same article defines other concepts that are relevant to the effects of interest such as that of intermediary, representative or competent technician, also referring to natural persons.

In view of these provisions, it is clear that the application of this law will entail the processing of information of certain natural persons, which must 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) and Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD).

There is a lack of references, whether general or more specific, to the regulations for the protection of personal data in the text of the draft. Although the applicability of the right to data protection certainly does not depend on its inclusion in this law, bearing in mind that one of its main purposes is to regulate a new model of relationship between the company and the competent public administrations in what the management and analysis of the own

economic activity is the epicenter, it would seem appropriate to incorporate an explicit reference to the right to the protection of personal data and especially to the principles of data protection in the design and data protection by default (article 25 RGPD).

This reference could be incorporated into article 5 of the Draft, which lists the general principles on which this new digital relationship model is based. In this sense, it is proposed to add the following section:

"h) Protection of personal data by design and by default".

Having said that, those provisions of the draft law 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

Title 2 of the draft law regulates the digital relationship model between the company and the Catalan public administrations.

This model is based (article 4) on the Single Business Window (hereinafter, FUE), which acts as an "inter-administrative network with the purpose of facilitating access to information on administrative procedures that are the responsibility of public administrations and promote the management of the same based on the data provided by the owner of the economic activity" (article 7).

The draft law establishes (article 10) that the FUE's own instruments, to provide the services defined in article 9, the single portal for companies (article 11), the private area (article 12) and the directory of companies, establishments and records (article 13), without prejudice to the fact that new ones may be developed in accordance with the needs that are de

The unique portal for companies, called Canal Empresa, brings together the information that the holders of economic activities and their intermediaries may need about the services and procedures of public administrations (article 11.1).

Article 11.4 provides that through this portal "the data of the administrative records is also published in open data format".

It would be convenient to specify, as far as possible, what these administrative records are and, especially, the nature of the data that would be the subject of publicity. It must be taken into consideration that the advertising, if applicable, of personal data (Article 4.1) RGPD) through said portal must have sufficient legitimacy (Article 6 RGPD) and conform to the rest of the principles established by legislation of data protection, in particular, that of data minimization (Article 5.1.c) RGPD), according to which only appropriate, relevant and limited data must be processed in relation to the purposes for which they are treated

Remember that, in accordance with articles 6.3 of the RGPD and 8 of the LOPDGDD, it must be a rule with the rank of law that determines the basis of the treatment (as in this case the publication of data) in order to be able to consider that the legal basis of article 6.1.e) of the RGPD applies.

The aforementioned portal also incorporates a "private area for each holder of an economic activity with exercise in Catalonia, where all relations that occur with the Catalan public administrations throughout their life must be integrated" (article 12.1).

Access to this private area, according to article 12.2, "can be done with any of the electronic identification mechanisms allowed by current regulations for the different subjects, natural persons or legal entities".

This forecast is positively valued, given that, from the point of view of data protection, it is necessary, among other security measures, to adopt appropriate mechanisms that allow the correct identification and authentication of the users of this space, for the purposes of guaranteeing, as required by the RGPD, that no unauthorized processing will take place (Article 5.1.f)).

Article 12.3 provides that, from this private area and once the owner of an economic activity or an establishment has been identified, this can, among other actions, "initiate and manage electronically the procedures related to its economic activity, regardless of the responsible administration, and follow it up to its end"
(letter a)).

These procedures may include the notification of the start of activity (Article 30), of a change of ownership (Article 31), of substantial changes to the conditions under which the activity is carried out (Article 32) or of termination definitive of the activity (article 33), as well as the payment of the fees associated with the start-up of an activity or an establishment (article 34), among others.

Make it clear that in the collection of personal information, in this case from the means enabled by the FUE, it is important to respect the principles of transparency (Article 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 holder of the economic activity, in relation to each of these or other procedures, information on the conditions and circumstances relating to the processing of the data, of concise, transparent, intelligible 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 it.

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 o

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, it must be taken 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 and the possibility of exercising the habeas data rights established in articles 15 to 22 of the RGPD, as well as the fact that, as can be seen from section 3.e) of this article 12 of the Draft and especially from article 18 (to which we mention later), the data will be used for the elaboration of profiles (article 11.2 LOPDGDD).

It should also be taken into consideration that if certain data were not obtained from the owner of the economic activity, but rather by directly consulting the information held by third parties, it would also be necessary to include in the basic information (article 11.3 LOPDGDD):

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

And it would also be necessary to inform about the possibility of objecting to this consultation or collection of data from third parties, as well as the consequences that would arise from it (if you objected, you would have to provide the necessary data). For this purpose, a box could be included in the corresponding procedure that could be checked in the event of wanting to object to this inqui

With respect to the principle of data minimization (Article 5.1.c) RGPD), it must be borne in mind that the personal data collected from the means enabled by the FUE must be adequate, relevant and limited to what is necessary to achieve the until they justify their treatment in each case.

Article 13 of the Draft Law creates the directory of companies, establishments and records as an instrument that must allow the owner of the economic activity to have a comprehensive and transparent view of the information available to the different public administrations related with their economic activity and their establishments.

This directory, according to article 12.3.b) of the Preliminary Project, will be accessible to the owner of the economic activity from his private area of the FUE.

Article 6.1.b) of the Preliminary Draft expressly recognizes the right of the holders of economic activities to know at any time this type of information, the use made by the administrations and the corresponding treatments.

Without prejudice to positively valuing these forecasts, warn that, regarding the right of access of the interested party recognized in article 15 of the RGPD, the information that should be provided to the owner of the economic activity (person physical) should cover all the aspects referred to in this provision of the RGPD.

In order to avoid possible confusion, it is suggested to modify the wording of this article in the following sense:

> **"b) Know at any time the data that the public administrations involved have on their economic activity and their establishments, and what use they make of it, in accordance, where appropriate, with data protection regulations."**

IV

The draft law incorporates, throughout its articulation, several provisions relating to the need to share the data provided by the owner of an economic activity, through the private area of the FUE, between the different public administrations with powers in the field of economic activity.

For example, Article 6.3.b) of the Preliminary Draft imposes on public administrations the obligation to "make available to the holders and other competent administrations all the data they have on an activity or establishment and guarantee - its access".

Or, for example, article 12.1, second paragraph, states that "the information contained in this area (the private area) must be shared, compatible and interoperable, so that, in accordance with the rights and duties of each part, can be consulted and updated both by the persons holding the economic activities and by the public administrations".

In order to be able to make this communication of data effective, the draft law foresees mechanisms such as the need to standardize the data (article 15), the figure of the establishment's unique identifier (article 16) or the processing unified (article 17).

The standardization of data, according to article 15.2, consists in the "implementation of a dictionary that collects the set of basic and specific data that, according to current regulations, the holders of economic activities must communicate to the different administrations public".

The unique identifier of the establishment, according to article 16.1, "must enable the unequivocal identification of a location where an economic activity is carried out over time, regardless of the competent administration that has registered this establishment , and regardless of the transfer of the owner of the activity or the substitution of one activity for another". It is intended, in this way, that the establishment "can be recognized in all the administrative records in which it appears".

The unified processing, designed for the case of the concurrence of different regimes of intervention on the same activity, is, according to article 17.1, "the data capture and processing mechanism that allows the owners of the economic activities to facilitate the Catalan public administrations the data and documents relating to their activity and their establishments only once and guarantee their quality and consistency".

These forecasts of the Preliminary Project are mainly linked to the need to guarantee the right of the holder of the economic activity to "provide the data and documents relating to their activity and establishments only once" which the same Preliminary Project recognizes in its a

6.1.c), with the ultimate aim of speeding up the processing of administrative procedures in this area.

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 (article 6 RGPD), 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 consideration, 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 each administration requires for the processing of procedures related to economic activities that, in accordance with the applicable legislation (either this same law or the sectoral legislation), they are within their jurisdiction.

In view of this, a provision such as that established in article 14.2 of the draft law, according to which "the data are (...) shared by all the Catalan public administrations, for which it has been to maximize its reuse".

It would be advisable for the wording of this article to reflect greater consistency with data protection regulations in the terms indicated. In this sense, an indent could be added to indicate that "the data are (...) shared by the competent public administrations in the field of economic activity respecting data protection regulations".

And it would also be advisable for the wording of article 6.3.b) of the aforementioned draft to include a reference to this regulation. In this case, the following wording is suggested: "Make available to the holders and other competent public administrations all the data they have on an activity or establishment and guarantee access, respecting the protection regulations of data."

v

Article 14.3 of the Draft Law establishes that "to make the single data criterion effective, collaboration mechanisms must be established between the different bodies and systems custodians of the same data that guarantee its quality".

Certainly, the principle of accuracy (Article 5.1.d) RGPD) requires that the information being processed is accurate and up-to-date. This must lead to the purification of that information that is not correct, either because it was initially no longer correct, because it has become out of date with the passage of time or because of the appearance of new circumstances.

However, together with this principle, the principle of purpose, already mentioned, must also be taken into account. That is to say, that the aforementioned provision of the Preliminary Project will only be able to operate in areas in which the different data that you wish to purge have been collected for the same purpose (Article 5.1.b) RGPD) or for a compatible purpose (point out that article 6 of the RGPD allows data collected for one purpose to be used for another purpose that is considered compatible in any of the cases provided for in section 4).

Likewise, it should be borne in mind that in some cases it does not seem that the single data criterion could be applied. For example, article 41.1 of Law 39/2015, of October 1, of

common administrative procedure of public administrations (henceforth, LPACAP) allows the citizen to indicate an electronic device or an email address for sending notification notices in each procedure. Obviously this address can be a specific address for a certain procedure that does not match the one that can be used in other procedures.

For this reason, it is proposed that a clause be added to article 14.3 to indicate that this mechanism can be applied "when appropriate".

VI

It is particularly interesting to highlight, from the data protection side, the provisions of article 18 of the Draft Law, which regulates the "proactivity of the administration" in the following terms:

> **"1. In the event that, based on the data provided by the holder of an economic activity through the single business window, it is detected that new procedures necessary for the development of their activity need to be initiated, the administration can proactively initiate the actions appropriate from the private area provided for in article 9 so that the holder validates the information or provides new information.**
> **2. Public administrations can proactively offer the services available at any time that, based on the data they have at their disposal, they consider may be of interest to the owner of the economic activity or to the entrepreneurial people.**
> **3. The Catalan public administrations are enabled to use the data for the provision of proactive and personalized services to the owners of economic activities and to entrepreneurial people."**

It is known that the personalization of public services aims to adapt the provision of these services to the specific needs of each user or interested person. Proactivity, for its part, anticipates the needs of the user or interested person. Both actions can be based on the analysis of data through algorithms, which allows the identification of profiles and behavior patterns and/or behavior guidelines. In any case, it must be borne in mind that this is an innovative use of technologies in public administration with repercussions on people's privacy, so it becomes essential in these cases to take into account the requirements derived from the regulations of data protection.

The RGPD establishes that all processing of personal data must be lawful (Article 5.1.a)) and, in this sense, establishes a system of legitimizing the processing of data that is based on the need for one of the legal bases to be met established in its article 6.

In the field of public administrations and in a case like the one at hand, the enabling legal basis provided for in article 6.1.e) of the RGPD could apply, to the extent that the intended treatment is necessary for the fulfillment of 'a mission carried out in the public interest or in the exercise of public powers conferred on the public administration in question.

However, as can be seen from article 6.3 of the RGPD, the basis of the treatment indicated in article 6.1.e) of the RGPD must be established by European Union Law or by the law of the States members that applies to the person responsible for the treatment, which, in the case of the Spanish State, must be in a rule with the rank of law (article 53 CE and article 8 LOPDGDD).

Section 3 of this article 18 of the Draft seems to have the vocation to be the "legal basis" that should legitimize the use of data by the administration for the provision

of proactive and personalized services in the terms established in sections 1 and 2 of this same precept.

At this point it should be noted that the RGPD itself establishes the requirements for this "legal basis". Thus, in accordance with the aforementioned article 6.3 in fine:

> **"The purpose of the treatment must be determined in said legal basis or, in relation to the treatment referred to in section 1, letter e), it will be necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers given to the person in charge of the treatment. Said legal basis may contain specific provisions to adapt the application of the rules of this Regulation, among others: the general conditions that govern the legality of the treatment by the person in charge; the types of data object of treatment; the interested parties affected; the entities to which personal data can be communicated and the purposes of such communication; the limitation of the purpose; the periods of data conservation, as well as the operations and procedures of treatment, including the measures to guarantee legal and equitable treatment, as well as those relating to other specific situations of treatment in accordance with chapter IX. The Law of the Union or of the Member States will fulfill an objective of public interest and will be proportional to the legitimate aim pursued."**

And, in any case, this "legal basis" "must be clear and precise and its application predictable for its recipients, in accordance with the jurisprudence of the Court of Justice of the European Union (...) and the European Court of Human Rights " (consideration 41 in fine).

It is in this context that it is necessary to examine, separately, the provisions of article 18 of the draft law.

VII

It should be noted that article 18.1 of the Preliminary Draft defines its object clearly enough in terms of the persons affected, the data subjected to treatment and the purpose of the intended treatment.

The precept provides that "in the event that, based on the data provided by the owner of an economic activity from the single business window, it is detected that it is necessary to initiate new procedures necessary for the development of its activity, the administration may proactively initiate the appropriate actions from the private area provided for in article 9 so that the holder validates the information or provides new information" (and, in accordance with section 3, it is enabled for data use).

Given the terms used, the proactive action of the administration in the present case seems to consist of offering the owner of an economic activity, when appropriate, information on the existence of other procedures that are necessary or mandatory for this to be able to carry out their activity.

It can also be understood that the information that will be used to provide this type of proactive service and the source of this information is sufficiently clear: the data provided by the owner of the economic activity from the FUE. In other words, information included in forms and/or requests associated with specific procedures related to your economic activity.

This action could be understood, from the data protection aspect, as falling within the reasonable expectations that the owner of the economic activity may have regarding the processing of his data at the time he addresses the administration to perform a

certain procedure linked to their economic activity. These expectations would include the administration carrying out actions that allow it to more easily and efficiently initiate the processing of these other procedures.

Therefore, the provisions of this section 1 of article 18 would be in accordance with the data protection regulations.

VIII

More controversial may be the forecasts established in article 18.2 of the Preliminary Project.

This precept states that "public administrations can proactively offer the services available at any time that, based on the data they have at their disposal, they consider may be of interest to the owner of the economic activity or to the people entrepreneurs" (and, in accordance with section 3, enable them to use the data).

It should be noted that the purpose of this forecast is not sufficiently clear and concrete in terms of the services that will be offered by the administration in a proactive manner and the consequences that for the owners of an economic activity may derive from this offer.

Although from the reference to "services available at any time" it may be thought that, unlike the assumption provided for in section 1, it would be services or procedures that are not necessary for the owner of the economic activity to develop their activity, the wording does not allow establishing precisely whether they would in any case be services somehow related to this economic activity or whether it would be any other type of service from any other area of action of the public administrations (which hardly could be justified)

It would therefore be advisable to add an indent to indicate that these are services available at any time "within the scope of economic activity" that may be of interest to the owner of an economic activity.

The wording of the precept does not clarify what this offering of proactive services would consist of nor does it specify the data processing that is required in order to offer these services.

At this point, mention should be made of the Digital Administration Decree Project, also submitted to this Authority's report (PD 9/2019).

Article 33 of this Project establishes that "proactive and personalized service means the service whose purpose is to inform people, in a predictive and advance manner, about the public services they can access" (paragraph 1) . The offer of these services is based, according to this same precept, on "the creation of profiles of people" (section 3).

In view of these forecasts (and as long as the Draft Decree that is approved maintains this wording), it could be understood that the proactive offering of services, referred to in Article 18.2 of the Preliminary Draft, would consist of also in the present case by informing the holder of an economic activity about the services available at any time within the scope of the economic activity that may be of interest to them. Offering that would be carried out through the elaboration of profiles on your person.

In the event that this is the case, it should be noted that, in certain cases, the possibility of offering other services of interest to the owner of an economic activity could be carried out without the need to create any type of profile. A first level of proactivity could be achieved by offering him, through the FUE, information on other procedures or services related to his economic activity in which he might be interested.

For example, the economic situation of the person who wants to undertake an economic activity would in principle be related to the start-up of the activity, but it would not seem justified that on the occasion of the communication of the start of the activity this could lead draw up an economic profile of your person - obtained from the analysis of the information held by the administration (taxes, penalties, deferred tax payments, information on social services, employment information, pensions, payroll if if it was a public worker, etc.)- to offer him the possibility of availing himself of a certain line of subsidies or official credit. This information could be offered without the need to prepare a previous economic profile.

It is also true that in other services, in which the relationship with the related information to be offered may not be so obvious or in which the volume of information to be offered requires more careful selection, it may be positive to offer personalized information. But this does not mean that the possibility of offering these services must lead to admitting any type of profile. When it is justified to do so, it must be borne in mind that these should be limited to the analysis of certain information that is predictable in relation to the service in question.

In order to offer greater transparency in the processing of data, it would be convenient for article 18.2 to include that the offer of proactive services to the owner of the economic activity will be based, when there are circumstances that justify it, on the elaboration of profiles.

It should also be noted that the precept is not specific enough with regard to the data or information that would be the object of treatment to offer these types of services based, when appropriate, on the creation of profiles. It is not sufficiently clear neither the origin of this data nor what are the aspects that will be analyzed.

Reference is made, in this sense, to the "data available to the public administrations", that is to say, that the information from which the profile would be drawn up would cover any information held by the administration, already whether it was collected on the occasion of the procedure in question, whether it was previously collected or collected in the future.

What's more, the terms used could lead one to think that it could cover the data available to the administrations for the exercise of their powers in any area of action (social services, health, etc.) different from the one we are in (that of economic activity).

It should be borne in mind that the administration has a large amount of information on all aspects of citizens' lives (residence, family relationships, economic, professional, employment information, training, infringements and sanctions, crimes and misdemeanors, etc.) which usually includes also special categories of data (health, social services, certain aspects of sex life or sexual orientation, biometric data, etc.).

These data, it must be remembered, have been collected for a specific purpose (principle of purpose limitation). Certainly, it cannot be ruled out that they are subsequently used for other compatible purposes, as recognized by articles 5.1.b) and 6.4 of the RGPD. However, a wording such as that incorporated in article 18.2 of the Preliminary Draft would not be compatible with this principle of data protection, from which it could be deduced that the data held by the administration (which, as it has been said, they can be many and of various nature) will end up being used to develop profiles that could come to include all aspects of the lives of the holders of economic activities in order to offer them services that may or may not be related to the their economic activity.

This type of treatment would clearly exceed the expectations that the holder of an economic activity may have when he addresses the administration to carry out a certain procedure regarding this activity and would be highly intrusive in his life.

It should also be taken into account that the data protection regulations recognize the right of the affected person not to be the subject of an automated decision, including profiling, that produces legal effects on him or that significantly affects him in a way similar (article 22 RGPD). The creation of profiles is only allowed, with a certain exceptional character, in the three cases provided for in article 22 and with the requirements and guarantees contained therein.

If, as it seems, the purpose of the elaboration of the profiles in the present case is only to inform the owner of an economic activity about the services that may affect him in a more predictable way, it would not seem, in principle, that the profiling should have legal effects on your person. However, it cannot be ruled out that, depending on the information processed, the type of service to which it refers and the rest of the concurrent circumstances, a treatment of this type may have significant effects on the owner of the activity economic, case in which the provisions of article 22 of the RGPD should be taken into account, cited.

This article, in its section 2.b), admits the possibility that a rule with the rank of law provides for a proactive service based on the elaboration of profiles in a certain area (as could be the case examined). However, it must be taken into consideration that this precept also provides that this legal rule must provide for adequate measures to safeguard the rights, freedoms and legitimate interests of the interested party.

Point out that the establishment of these measures would be essential if it were intended to apply this type of service to profiles that involve the processing of special categories of data, as recalled by the recent Constitutional Court Judgment 76/2019, of 22 May, in relation to article 58 bis of Organic Law 5/1985, of 19 June, on the general electoral regime, incorporated by the LOPDGDD. In addition, to comply with this treatment for reasons of essential public interest (articles 22.4 and 9.1.g) RGPD), which should be clearly specified in the standard with the rank of law.

It should be noted that the draft does not include, neither in this article 18 nor in any other article, any provision in this regard. It would be convenient to assess the possible need to provide for it appropriate measures to safeguard the rights, freedoms and legitimate interests of the holders of economic activities in the event that the intended treatment could have legal effects on these people or could affect them in a similar way.

That being the case, it could be appropriate to include in it that, in order to guarantee the fundamental rights of the holders of economic activities, an opt-out system will be established (for example, in the private area of the FUE), so that they can decide directly, without the need for any other justification, to stay out of the offer of proactive services. This without prejudice to those other guarantees that are considered appropriate to provide in this rule for that purpose.

In conclusion, in order to be able to consider that the provisions of article 18.2 (and 18.3) comply with the requirements of the data protection regulations (article 6.3 RGPD in accordance with the jurisprudence of the CJEU and the ECtHR), it would be advisable to review the wording used, for the purposes of offering greater transparency on the circumstances and under which conditions the public authorities (the said administrations) are enabled to carry out the intended treatment (the provision of proactive and personalized services).

This would imply, apart from defining what is meant by a proactive and personalized service, foreseeing that the offering of these services will be based, when there are circumstances that justify it, on the creation of profiles; that, for the preparation of these profiles, information associated with specific procedures or services in the field of economic activity will be used; that, where applicable, special categories of data will be excluded (Article 9 RGPD); and that the aspects to

the elaboration of the profiles will serve to offer services related to the procedure or service from which the information has been collected and that are compatible.

In addition, it may be necessary to provide for appropriate measures to safeguard the rights, freedoms and legitimate interests of the owners of economic activities, such as that relating to the establishment of an opt-out system, among others.

All this, apart from offering sufficient and comprehensible information about the scope and consequences that can be derived from this type of treatment for the holders of economic activities (for example, through the private area of the FUE).

In any case, taking into account that this type of service involves the obtaining of profiles through automated systems, which is an innovative use of technology in the field of public administration, that the treatment could have impact on the exercise of people's rights and that it cannot be excluded that it involves a large-scale treatment (depending on the number of services and the people who are ultimately affected by them), before proceeding to the approval of the 'Draft bill it would be necessary to carry out an assessment relating to the impact on data protection (AIPD) in accordance with the provisions of article 35 of the RGPD.

For these purposes, it is recommended to consult the Guide on impact assessment related to data protection in the RGPD (2.0) available on the Authority's website.

IX

Articles 21 and 22 of the draft law regulate the functions that correspond to the different actors involved in the deployment of the FUE.

Article 21.2 establishes that the Office of Business Management provides the services of the FUE provided for in article 7 and others that the FUE has skills.

It adds, in section 3, that "the Office, in collaboration with the bodies of article 22, promotes the technological solutions that enable the correct functioning of the instruments provided for in this law (...)".

And, in section 4, that the Office "defines and manages the dictionary of the Single Business Window, which includes all the data related to economic activity in collaboration with the participating public administrations, as well as the tools that enable the functionalities related to establishment and register data."

Article 22 establishes that "the Center for Telecommunications and Information Technologies of the Generalitat of Catalonia makes available to the bodies of the Generalitat of Catalonia the necessary technological solutions to be able to provide the services of the single business window" (paragraph 1) .

Also, in section 2, that "the Administration of the Generalitat, in collaboration with the Consortium of Open Administration of Catalonia as well as the Provincial Councils, make available to local bodies the technological solutions and instruments necessary to be able provide, under equal conditions, the services of the single business window."

From the point of view of data protection, it could be convenient to define the position occupied by each of these entities in relation to the processing of the data of the holders of the economic activities or other possible affected persons.

Responsible for the treatment is understood as "the natural or legal person, public authority, service or other body that, alone or together with others, determines the ends and means of the treatment" (article 4.7 RGPD).

The person in charge of the treatment is understood as "the natural or legal person, public authority, service or other organism that processes personal data on behalf of the person responsible for the treatment" (article 4.8 RGPD).

Given the complexity derived from the operation of the FUE, it could be clarifying if the text of the law itself established the responsibilities of the different participating agents.

Thus, it could be gathered that the public administrations with powers in the field of economic activity have the status of responsible for the treatment with respect to the data or information necessary for the exercise of the respective powers.

It could also gather, in view of the provisions of article 21, that the Management Office Empresarial acts as responsible for the treatment of the information that is required for the provision of the FUE service that this law attributes to it.

To this end, it is suggested to add a new section to article 21 with the following content:

> **"5. The Office is responsible for the processing of personal data linked to the provision of the Finestreta Única Empresarial service".**

As for the rest of the entities, mentioned in article 22, which can provide technological solutions to be able to provide the services of the FUE, they can have the status of data processors if their action involves having to process personal information for account of the Business Management Office, responsible for providing the FUE service.

For this reason, it could be convenient to include in the Preliminary Project this status of those in charge of the treatment of said entities. This, without prejudice to having to formalize the corresponding data processor contracts with the Office of Business Management under the terms of article 28.3 of the RGPD.

To warn, at this point, that the wording of article 22 leads to some confusion, since it follows that the decisions on the technological solutions that must enable the correct functioning of the FUE fall on the bodies of the Generalitat and/or the local bodies, when in reality they correspond to the Business Management Office.

For this reason, it is proposed to modify this article in the following sense:

> **"1. The Center for Telecommunications and Information Technologies of the Generalitat of Catalonia, the Consortium of Open Administration of Catalonia, and where applicable the Administration of the Generalitat and the Provincial Councils, make technological solutions available to the Office of Business Management necessary to be able to provide the services of the Business Single Window.**
> **2. If the entities referred to in this article have to process personal data linked to the provision of the Single Business Window services for which the Office is responsible, they will be considered data processors with respect to this entity. "**

X

Finally, the need to carry out a risk analysis in order to establish the appropriate technical and organizational security measures to safeguard the right to data protection of the holders of economic activities (article 32 and recital 83).

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 sense, the first additional provision of the LOPDGDD states that:

> **"1. The National Security Scheme will include the measures that must be implemented in the 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 what is established in the 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.

For all this the following are done,

Conclusions

Having examined the draft law for the promotion of economic activity in a digital environment, it is considered adequate to the provisions established in the corresponding regulations on the protection of personal data, as long as the considerations made in this report are taken into account , in particular those contained in the legal basis VIII.

Barcelona, October 8, 2019