PD 13/2019

Legal report in relation to the draft Decree approving the Regulation for the partial development of Law 19/2014, of December 29, on transparency, access to public information and good governance

Background

A draft Decree is presented to the Catalan Data Protection Authority approving the Regulation for the partial development of Law 19/2014, of December 29, on transparency, access to public information and good governance, in order that the Authority issue its opinion in this regard.

The draft Decree consists of a single article that includes, the preamble, 64 articles, a repealing provision, two additional provisions, two final provisions, and a transitory provision.

Having examined the draft decree, and taking into account the current applicable regulations, this Legal Advisory Board issues the following report.

Legal foundations

I

(...)

II

The purpose of the draft decree being examined is to approve the Regulation for the partial development of Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC).

As can be seen from the preamble, this regulation "is intended to guarantee a more homogeneous, effective and comprehensive implementation of the Law, to clarify indeterminate legal concepts and to resolve interpretative doubts by taking advantage of the valuable experience acquired by the public administrations of Catalonia. Likewise, in the area of the Government of the Generalitat, the work carried out by the Interdepartmental Commission for Transparency and Open Government has been of particular relevance in the preparation of the content of the active advertising obligations through the approval of interpretive criteria.

The Draft Decree consists of a preamble, a single article approving the attached partial regulation, a single additional provision, a single transitional provision, a single repealing provision and two final provisions

In accordance with article 1 of the Regulation, this project aims to develop titles I to III of Law 19/2014, of 29 December, referring to the general provisions, the provisions on transparency and the provisions on the 'access to public information.

Article 5.1.a) of the RGPD establishes that all processing of personal data must be lawful, fair and transparent in relation to the interested party (principle of lawfulness, loyalty and transparency).

In accordance with article 6.1 of the RGPD to carry out a treatment of personal data it is necessary to have a legal basis that legitimizes it, either the consent of the affected person, or any of the other circumstances provided for in this article, such as that "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment" (letter c) or that "the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers conferred on the person in charge of the treatment " (letter e).

As can be seen from article 6.3 of the RGPD and expressly included in article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereafter LOPDGDD), the treatment of data can only be considered based on these legal bases of article 6.1. c) and e) of the RGPD when so established by a rule with the rank of law.

Point out that the RGPD itself establishes the requirements for this "legal basis". In this sense, the aforementioned article 6.3 in fine provides:

> **"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).

In this sense, the LTC that develops this draft decree is the legal basis on which the processing of personal data provided for the purposes of transparency and active advertising (Title II) must be protected, as well as those that may derive- of the right of access to public information (Title III). The regulatory rule that is now being analyzed can specify some aspects provided for in the LTC, but it cannot enable data treatments not provided for in the LTC (as would be the case with the dissemination of information not provided for in the aforementioned law).

In this context, those provisions of the draft decree 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

General provisions of Title I

Section 1.c) of article 7 establishes that "1. For the purposes of what is provided for in letters d) and e) of article 3.1 of Law 19/2014, of December 29, is understood as subjects obliged to supply the information provided for in article 3.2 of Law 19/ 2014, of December 29, natural and legal persons not included in letters a), b) and) of article 3.1 of Law 19/2014, of December 29, which, regardless of their legal form of creation or constitution, (...) c) Receive public funds to operate or develop their activities."

The precept adds that "In no case is the perception of public funds by an individual due to their personal circumstances of special social vulnerability understood to be included in this case."

The provision must be evaluated positively, although it must be borne in mind that the right to data protection can justify the preservation of the identity of the beneficiaries not only in these cases expressly referred to in Article 15.1 of LTC but also, for example, when its disclosure affects data referred to in article 23 of the LTC, applicable both to the regime of active advertising and to that of the right of access, (article 7.1 of LTC).

For this reason, it is proposed to modify the last paragraph of article 7.1.c) with the following wording:

"In no case is this assumption understood to include the perception of public funds by a natural person due to their personal circumstances of special social vulnerability, or for any other reason that involves the disclosure of data deserving of special protection, case in which the identity of the beneficiaries will have to be preserved."

Section 2 of article 8 ("Private entities responsible for fulfilling obligations of active transparency") develops article 3.4 of the LTC referring to the subjection of certain entities receiving public funds (political parties, associations and linked foundations, trade union and business organizations and private entities) to the transparency obligations (title II), when the funds received exceed 100,00 euros per year, or if at least forty percent of their income comes from subsidies or public aid and is a amount greater than 5,000 euros. Natural persons who may be recipients or beneficiaries of subsidies or aid are therefore not included in this case.

On the other hand, letter c) of article 8.2 includes subsidies or aid "In favor of physical or legal persons, with the exclusion therefore of transfers or contributions between public administrations"

Considering that natural persons are not included in article 3.4 of the LTC, they should be omitted as beneficiaries in this case. For these purposes, the following wording is proposed: "c) In favor of private entities, therefore excluding transfers or contributions between public administrations; "

On the other hand, the last paragraph of this section delimits the period of publication of the information by the subjects obliged by article 3.4 of the LTC, obliging them to maintain the information, "at least, during the entire period of justification of the aid or subsidy received, as well as during the limitation period of the Administration's right to revoke the aid or subsidy."

Despite the fact that the obliged subjects of article 3.4 a) ib) of the LTC do not include natural persons, the planned periods of maintenance of the information on the websites of the beneficiary entities included in this section will have an impact with respect to the personal information that these entities are required to publish, that is, professional information and

remuneration of governing bodies and managerial positions detailed in articles 38, 39 and 40 of the same regulation.

Specifically, articles 39 and 40 foresee, among others, the publication of the identity of the members of the governing bodies and of the management team, their profiles and professional trajectories (39.1.b) and 40.1.c) respectively) . It is also established the publication of the "remuneration of its management or administration bodies, if applicable, and in accordance with the provisions of article 15.2 of the LTC, and articles 9 and 10 of the Regulation." (arts. 39.1.m) and 40.1

The principle of limiting the retention period (art.5.1.e) RGPD) requires that personal data be kept no longer than necessary for the purposes of the treatment.
The purpose of publishing said information lies in the control of public activity as an instrument for improving its management, in this case, in the matter of subsidies.

Article 15.1 c) of the LTC obliges administrations to publish information on subsidies granted during the last five years. The limitation period for the right of the Administration to revoke the aid or subsidy is 4 years, generally, but it can be interrupted for any of the causes provided for in article 39 of Law 38/2003, of November 17, General of Subsidies (LGS) and therefore extend more than the 5 years provided for by the LTC, which could result in the Administration removing information about a subsidy from the transparency portal to one of the entities included in article 3.4 of the LTC and in return these entities are obliged to maintain it for a longer period (including the retributive personal data of their managerial positions if they are in the case of article 15.2 of the LTC as provided for in the Regulation).

Taking this into account, it is proposed to establish the term of maintenance of the information on the respective corporate websites in 5 years, in line with the period provided for in the LTC in the matter of subsidies, with the following wording:

"The information must be published before the thirty-first of January of the year following the one in which the thresholds provided for in letters a) or b) of article 3.4 of Law 19/ 2014, of December 29 and are maintained for five years from the granting of the aid or subsidy"

IV

Forecasts on the active advertising regime applicable to the Administration of the Generalitat (Title II, and Chapter I)

Section 2 of article 11 (General obligations and form of publication) provides that the information subject to active advertising must be offered in electronic formats and must use open standards that allow its reuse, without conditions , in the terms established by Title IV of this Regulation, modality provided for in article 4.2.a) of Law 37/2007, of November 16, on reuse of public sector information.

However, it should be noted that article 16 of the LTC provides that "1. Obliged subjects must provide people with access to public information in a reusable format, in order to improve transparency, generate value for society and promote interoperability between administrations, within the limits established by the regulations on reuse of public sector information.

Law 37/2007 establishes that the reuse of documents containing personal data is governed by the provisions of the personal data protection regulations (article 4.6 of Law 37/2007).

The re-use involves the processing of personal data, and therefore the re-users must comply with the data protection regulations. The principle of purpose limitation (article art. 5.1.b) RGPD) requires that personal data that have been collected for a specific purpose are not used in an incompatible manner. The fact that personal data are published for compliance with transparency obligations does not mean that they are open for reuse for any other purpose.

The reuse of the published data is conditioned on the fact that they are used in a manner compatible with the purpose of control and transparency of administrative activity. Therefore, we cannot talk about reuse without conditions, when it comes to information that contains personal data.

Article 60 of Title IV of the Regulation, to which we will refer later, no longer speaks of reuse without conditions but, with regard to information containing personal data, section 2.e) of this article requires that when the information contains personal data, the open license for the use of information-Catalunya and the creative commons licenses must guarantee compliance with the conditions established and specifically of "the specific purpose or purposes for which it is possible future reuse of the data."

Taking this into account, the mention "without conditions" in paragraph 2 of article 11 should be deleted.

Paragraph 3 of this article 11 seems to refer to the period to which the published information must refer. According to line 1 of the section, it seems that in general the published information must refer to the current year, and letters a) and b) seem to establish exceptions to this general criterion.

It seems justified that the information relating to contractual and subsidized activity must refer to the last five years, although curiously, according to the wording of this section, this same criterion does not apply to the activity conventional

On the other hand, the provision contained in letter a) is more difficult to understand, given that the application of this provision would lead to all matters referred to in Chapter II of Title II (in fact, most of the information to be published), the information should refer indefinitely to all that has been generated since the entry into force of the LTC. This not only fits poorly with the provisions of Article 11.4 of the project, but when it contains personal data, it may conflict with data protection regulations.

For this reason, and taking into account that the time that has passed since the entry into force of the LTC already makes it unnecessary to clarify the moment from which the information is subject to the duty of active publicity, the following wording is proposed for the section 3:

"3. The information to be published must refer to the current year. The information on public procurement, conventional activity and subsidized activity referred to in Chapter III of Title II of Law 19/2014, of December 29, must refer to the five years prior to the current year."

On the other hand, in relation to section 4, it must be said that the principle of limiting the retention period requires that personal data be kept in such a way as to allow identification for no longer than is necessary to achieve the purposes of the treatment (Article 5.1.e) RGPD).

The general setting and by default of what may be available in the project itself or other applicable rules, of a minimum period of 5 years for maintaining the publication of the information may be justified if we take into account that the the purpose of transparency pursued with the publication of information is that the public can have knowledge of public activity and form a critical opinion regarding the actions or decisions taken by those responsible for public management carried out during at least one democratic mandate , as a guarantee of the retention of accounts and the requirement of responsibilities. Therefore, this set period would be in line with the principle of limitation of the afor

These same considerations would also apply to articles 25.3 and 25.4 of the project.

Section 6 of this same article 11 includes the provisions of article 7.1 of the LTC, by providing that "The limits applicable to the obligations of active transparency are the same as title III of Law 19/2014, of December 29, establishes for the right of access to public information."

The second paragraph of this section emphasizes the possibility of omitting, after weighting, the data of people who are in certain situations: "Especially the publicity of data relating to physical persons can be omitted with reason in cases in which these people are in a situation of special protection from gender violence or terrorist threat, among others, which may be aggravated due to the publication of this data, after weighting the omission.".

Although the circumstances listed in this paragraph may certainly lead to having to omit advertising, there may be other reasons linked to the protection of personal data that require it (security issues not linked to gender violence or terrorism , existence of data on minors or other vulnerable groups, existence of special categories of data etc.). Collecting only the assumptions currently included in the project in this paragraph is confusing and favors a restrictive reading of the right to data protection that should be avoided. That is why it is proposed to delete this second paragraph.

This same consideration can also be made with respect to article 25.6 of the project.

v

This Authority, in the exercise of the functions attributed to it, has often received inquiries about the way in which the publication of resolutions and administrative acts should be carried out. In many cases, publication is easier to access and more understandable for citizens if the full text of documents is not published, but only an extract containing only the information that is relevant in each case. At the same time, publishing the information in this way facilitates the task of preventing unnecessary personal data from being published for the purpose of transparency.

For cases in which publication cannot be carried out in the manner described, and the text of the act or resolution must be published, and it is required to identify the authors of an act or

those who sign a contract or agreement, this identification must be carried out including only those data that may be relevant for transparency purposes. For these purposes, it is appropriate to remove clearly unnecessary data from this document, such as the contact details, the number. ID card or equivalent or the handwritten signature. We refer to what we already explained in CNS opinion 1/2019, available on our website.

For this reason, it is proposed to introduce a new article 11.bis, or if applicable, a section 8 of the current article 11 with the following wording:

"Article 11.bis Identification of authorities and public employees

1. When the publication of a resolution, agreement, contract, agreement or other document requires the identification of the author, or the people who sign it, it must be identified with the name and surname, the position, and the entity they represent or of which they are part. The location data, the no. ID card or equivalent, the handwritten signature and other identifying information of the persons who author or sign the document.

If the signature is electronic, an image of the electronically signed document must be published so that the properties of the electronic certificate used for the signature cannot be accessed."

2. When it comes to members of the forces and security forces or other cases that for security reasons require special protection, the identification with names and surnames must be replaced by the publication of a professional code or number.

3. It is up to the obliged subjects to inform the staff at their service about the publication of their personal data, for the purposes that, if applicable, they can exercise their rights, especially the right of opposition."

These considerations can be extended to articles 20, 22, 33 and 35 of the project.

In relation to the way in which the information subject to active publicity must be published, it would be convenient to also add an article 11.ter in order to clarify the concepts of pseudonymization and anonymization, which are then used in other articles of the project.

"Article 11.ter
Pseudonymization and anonymization

For the purposes of this Regulation, it means:

a) Anonymization: "elimination of the personal data of the affected natural persons contained in the information and also any other information that may allow them to be identified directly or indirectly without disproportionate efforts. This without prejudice to being able to maintain, where appropriate, the merely identifying data of the position or public employees who dictate or intervene in the act or resolution."

b) Pseudonymization: ""processing of personal data in such a way that they can no longer be attributed to an interested party without using additional information, provided that this information is recorded separately and is subject to technical and organizational measures aimed at ensuring that personal data are not attributed to an identified or identifiable natural person"

VI

Article 12.2 provides for the publication of completed information on the persons holding organs.
It would be good to clarify that the phone refers to the “professional phone”.

Article 13 regulates the publication of information related to "Employees and public employees"

Section 2 of article 13 establishes that "Additionally, it must be published every six months and based on the personnel information system of the Administration of the
Generalitat the information relating to:

a) The identification with names and surnames of the people who occupy unique positions, of temporary staff, and of the labor staff who, in accordance with the list of jobs, occupy a position in the service of the Government of the Generalitat and of their public sector entities, whether they hold jobs included in the list of jobs, or whether they provide services without holding jobs included in the list of jobs.

The identifying data can be anonymized or pseudo-anonymized in the event that any of the legally provided limits are applicable, after weighting.

b) The identification of the position or position occupied, the form of provision and the date of possession.
(...)

Article 9.1.d) of the LTC, to which paragraph 1 of this article of the project refers, obliges to publish "the list of jobs of official, labor and casual personnel, and the workforce and the list of temporary contracts and internships not linked to any job in said list of positions."

The RLT is configured as the organizational instrument of the Administration in which the names of the positions, the professional classification groups, the bodies or scales, if applicable, to which they are attached, the provision systems and the complementary remunerations.
The purpose of its publication is to inform about the different jobs available to the Administration, regardless of the people who occupy them.

Taking this into account, the publication of the names and surnames of the people who occupy the jobs included in apparatus 2 of the analyzed article 13, cannot be protected in the forecasts contained in article 9.1.d) of the LTC. Proof of this is that article 13.2 of the project begins with the expression "Additionally...".

This does not mean, however, that it is not possible to identify the people who occupy the unique positions, the temporary staff and the labor staff who are positions in the service of the Administration of the Generalitat or of the public sector entities, through other means provided for in the same LTC. Either because they are persons included in the case of article 9.1 b) LTC and developed by article 12 of this regulation, or because they are considered high officials (case provided for in article 9.1.f) LTC, that is to through the publication of the results of the selective processes for provision and promotion of staff provided for in letter e) of the same article 9. But it is in this context and not in another where the transparency legislation enables the treatment.

On the other hand, it does not seem to make sense to apply anonymization or pseudonymization mechanisms as provided for in the second section of this section, which precisely aims to publish the identity. It would simply be sufficient to provide for non-publication

of this information in case the application of any of the legally provided limits requires it.

Finally, make a linguistic observation in relation to the term "pseudo-anonymization" used in the second paragraph of this section, because, in line with what has been proposed for article 11.ter of the project, the data protection regulations do not refer to "pseudo anonymization" (which suggests partial anonymization) but to pseudonymization (derived from the word "pseudonym" and understood as "treatment of personal data in such a way that they can no longer be attributed to a interested party without using additional information, as long as this information is recorded separately and is subject to technical and organizational measures aimed at ensuring that the personal data are not attributed to an identified or identifiable natural person" (art. 4.5 RGPD)). It would therefore be necessary to replace "pseudonymisation" with "pseudonymisation".

Section 3 of article 13 details the information that must be published for the purposes of letter e) of article 9.1 of the LTC. It states that the calls for proposals and the results of: "a) Access procedures to the bodies and scales of official, statutory and labor personnel. b) Internal promotion procedures. c) Provisional and definitive provision procedures. d) Procedures for the selection of temporary staff or temporary workers, including temporary staff exchanges. e) Scholarships and grants for providing services. e) Internship recruitment offers."

Article 9.1.e) of the LTC obliges to publish "the calls and the results of the selective processes for the provision and promotion of personnel" in general. Any of the procedures referred to in this section has as its object the selection of personnel linked in one way or another to the Administration, - either through an official, labor or professional relationship through the granting of scholarships or grants or the realization of training practices-. These are selective or competitive procedures that are governed, among others, by the principles of publicity and transparency, and demonstrate a public interest coinciding with the purposes of transparency, a fact that justifies their inclusion in Article 9.1.e) of the LTC. However, several points need to be made.

First.- The publication of a nominal list of the people who are part of the job boards that follows from letter d), does not seem to be able to fit within these forecasts. The position of people listed in a job exchange is not the same as people who go on to occupy a job after having passed a selective process. These are job seekers with more or less expectations of finally being hired but who do not take up a job due to being on the stock market, but only have an expectation. This is why the disclosure of said information would only be justified in the terms provided for in article 9.1.d) of the LTC, from the moment and with respect to the people who, being part of these exchanges, come to occupy effectively a workplace.

To this end, it is proposed to draft letter d) of the aforementioned article 13 in the following terms:

"d) Procedures for the selection of interim or temporary workers, including the people who are part of the job boards who happen to occupy jobs. "

Second.- To warn that the publication of the identity of the beneficiaries of scholarships and grants awarded to provide services to the Administration provided for in letter e), must have the same precautions as those provided for in article 15.1.c) of the LTC in matters of subsidies and aid in general, and in this sense it would be appropriate to mention the preservation of the identity of the beneficiaries in the event that these grants or aid have been granted for

social vulnerability or any other reason that may reveal data that requires special protection.

To this end, it is proposed to draft letter d) of the aforementioned article 13 in the following terms:

"e) Scholarships and grants to provide services, unless these have been granted for reasons of social vulnerability or for any other reason that involves the disclosure of data deserving of special protection, in which case the identity of the beneficiaries will have to be preserved."

This same section 3, provides that "the data to be published must refer, at least, to the announcement of the call, the bases, the official announcements, the name and surnames of the persons admitted to each test or exercise of the process and of the person finally selected, including, in the latter case, four numbers of the national identity document or equivalent document."

Pursuant to the first section of the seventh Additional Provision of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (LOPDGDD), the identification of the affected persons must be made "by means of their first and last name, with the addition of four random numerical digits from the national identity document, the foreigner's identity number, the passport or an equivalent document. When the publication refers to a plurality of those affected, these random numbers must be alternated. "

It should be noted that in order to consistently apply the provisions of the aforementioned Additional Provision seven, the data protection authorities have approved guidelines under which, in the case of no. of DNI, the digits occupying the fourth, fifth, sixth and seventh positions must be published.

On the other hand, it should be borne in mind that article 9.1.e) only refers to the need to publish the result of the selection process. For this reason, and in accordance with the principle of minimization, it would be advisable not to reveal the identity of the people affected during the development of the process and not to have finally been selected. For these purposes, a possibility would be that in the publication of the results that are not the final result of the selective process, the identification with first and last name is replaced by a code, key or other identification instrument that is known only to the person concerned.

For this reason, it would be good if the wording of this section included the following wording:

"The data to be published must refer, at least, to the announcement of the call, the bases, the official announcements, the first and last names of the people admitted to each test or exercise of the process and of the person finally selected , including, in the latter case, four numbers of the national identity document or equivalent document, in accordance with the criteria established in the field of data protection.

In the list of admitted persons, and in the list of the results of tests or intermediate exercises, the identification with names and surnames can be replaced, in accordance with the rules of the call, by a code, key or other identification system known only to the affected person".

On the other hand, the last paragraph of this same section 3 establishes that the updating of the publication of the data is continuous, depending on the development of each call.
The forecast seems appropriate from the point of view of the data accuracy principle. However, it would be necessary to complete it with the maximum period of exposure of the final results of the tests. It should be noted that the appointment of the selected persons must be published indefinitely in the official gazettes in accordance with the civil service regulations

thus giving itself publicity. For this reason, the result of the selective processes and of course also the result of the intermediate phases of the selective process, does not seem to have to be extended beyond the deadline to be able to present an administrative appeal or administrative dispute.

For this reason, a wording like the following is proposed:

"The updating of the publication of the data is continuous, depending on the development of each call, and must not be maintained beyond the period of two months from the end of the process."

This same consideration can also be made regarding the last paragraph of article 27.2 of the project.

Section 8 of article 13 specifies that it is necessary to publish an extract of the current resolutions of authorization or recognition of compatibility with public or private activities that affect public employees.

Although the LTC only provides for the disclosure of compatibility resolutions affecting senior officials (Article 9.1.m) LTC), Article 8.1. d) of State Law 19/2013 obliges to publish "authorization or recognition of compatibility resolutions that affect public employees as well as those that authorize the exercise of private activity to the termination of high-ranking officials of the General Administration of the State or assimilated according to regional or local regulations."

The obligations provided for in State Law 19/2013 have the character of minimums, and constitute in this case the legal basis that enables the publication of information related to the compatibility resolutions of all public employees.

Despite the literalness of article 8.1.g) of the LTC and article 9.1.m) of the LTC, the application of articles 5.3 of Law 19/2013 and 7.1 of the LTC leads to recommend the use of forms of publication that allow the compatibility of both rights to a better extent. The Regulation obliges to publish not the full resolution but an extract with the information detailed in the same precept. It is thus chosen to define what is the relevant information for the purposes that citizens can know the extent of the activities declared compatible with the exercise of public functions or positions, and this option is, without a doubt, more respectful of the principle of data minimization.

VII

Article 14 collects the personal information that must be published for the purposes of complying with the different provisions contained in articles 9 and 11 of the LTC, with respect to "Senior positions and managerial staff of public sector entities"

Articles 9 and 11 do not refer only to public sector entities, but also to senior officials of the Generalitat Administration. The writing of this article seems to refer only to public sector entities. It would seem logical that the senior officials of the Government of the Generalitat were also included in this article, given that there is no other dedicated to this issue. For this reason, it is proposed to modify both the heading of this article and the different sections so that where it says "of the public sector entities" it is said "of the Administration of the Generalitat and its public sector entities".

Section 2 of article 14 establishes that the designations must be published for the access of these people to any training activity that involves an expense for the Administration of the Generalitat or its public sector. The data to be published are the same as those required in article 13.4 of the Regulation regarding the lists of employees/public in general admitted to training activities.

The publication of said information is also protected in this case in letter g) of article 9.1 of the LTC, and perhaps it would be more clarifying than in the same way as it is done in the rest of the sections indicated in the text , and it was said:

"
2. For the purposes of letter g) of article 9.1. of the LTC, the data relating to 2. The designations for the access of senior officials and staff must be published director of public sector entities to any training activity that involves an expense for the Administration of the Generalitat or its public sector."

Section 4 regulates the form and content of the personal information that must be published for the purposes of complying with article 11.1.b) of the LTC in relation to the remuneration, compensation and allowances received by these people, specifying that:

"They must be made public, with identification of the name, surname and position, and with monthly frequency, both the annual remuneration of high-ranking officials and of the managerial staff of the public sector in accordance with the remuneration data of the current year, as well as the compensations and per diems they have actually received. (...) "

Regarding this, warn that, in the opinion of this Authority, it would be less intrusive for the privacy of the people affected to publish the information identifying the position but without including first and last names. This would make it possible to know the amounts of public money paid for any concept to senior officials and managers, sacrificing data protection to a lesser extent by not allowing a direct identification of the people affected. This would not prevent the obviously indirect identification of the people affected by other means, among other things because the same Law already provides for the identification of the people who hold these positions, but it would undoubtedly be a more respectful measure with the principle of minimizing the data

In this regard, the following wording is proposed:

"They must be made public, specifying the position, and on a monthly basis, both the annual remuneration of high-ranking officials and the managerial staff of the public sector in accordance with the remuneration data for the current year, as well as the compensations and the diets they have actually received. (...) "

Section 5 regulates the details of the information that must be published for the purposes of complying with letters b) and) of article 11.1 of the LTC in relation to the declarations of activities, assets and interests that have to present the senior positions and managerial personnel of the public sector included in the scope of application of senior positions in the service of the G

With regard to the declaration of assets and interests, note that depending on the declaration model that has been used, it is possible that the relationship about the assets of the persons declaring and their value appears described in detail. It is important to assess, before publishing the information, the degree of impact on the privacy of the people affected, as well as the risks that the disclosure of said information may have. From this perspective, it is considered correct to define the detail in this article

of information that may be relevant for the purposes of knowing the patrimonial situation of these people, omitting information on the location of the properties (expressly excluded by article 56.2 of the LTC), or any other that could be excessively intrusive and affect the security of the reporting persons.

Section 6 regulates the detail of information that must be published with identification of name, surname and position, and with monthly frequency related to the activities they carry out.

Transparency about the activities of high officials is framed within the ethical principles and rules of conduct under which high officials must act in matters of good governance. Specifically, article 55.1 of the LTC indicates, among others, "c) The transparency of official activities, acts and decisions related to the management of public affairs entrusted to them and their official agenda, for the purposes of publicity of the Register of Interest Groups, established by Title IV."

The letter a) obliges to make public "the public agendas, regarding the contacts maintained with the interest groups in the terms and with the requirements that are defined in the current regulations governing the interest groups"

The LTC expressly provides that the information on the contacts maintained by senior officials with the people considered as interest groups is accessible to citizens through the Register created for the purpose, and where they must be registered obligatorily all natural or legal persons, or other groups that the Law considers as such, as well as all activities of direct or indirect influence carried out by these interest groups (articles 49 and 50 LTC).

The rest of the information on the activities of high-ranking officials or managers that must be published (gifts received and invitations to events, trips, travel, and accommodation, (letter b), and trips made by reason of the position and on behalf of the government or the Administration of the Generalitat (letter c))-, is directly related to certain obligations that the Code of Conduct for senior officials and managerial staff of the Administration of the Generalitat and its public sector entities (approved by Agreement GOV/82/2016, of June 21), imposes on this staff.

Specifically, article 5.17 of the aforementioned code obliges senior officials to "Refrain from accepting gifts and donations from individuals and public or private entities with the exception of non-commercial courtesy displays and commemorative objects , officers or protocols that may be given to him by reason of his position.

In the latter case, the non-commercial samples of courtesy and commemorative, official or protocol objects will be deposited with the ministry that will establish the use that will be made of them and will be published on the Generalitat's Transparency portal.

Advantageous treatment of any kind may not be accepted either, except for those derived from the protocol rules and inherent to the exercise of their position, as well as invitations to events with cultural content or public shows when they are due to the position held."

On the other hand, article 5.18. obliges them to "Accept only the payment of travel, travel and accommodation by other public administrations or public entities dependent on them, universities or non-profit entities, when they have to attend officially invited by reason of the position to an activity related to their responsibilities. Any invitation of this kind must be made public, mentioning the entity, the place and the reason for the invitation. In no case will payment for travel, travel or accommodation be accepted by a company or private entity or by an individual."

Although the LTC does not provide for the obligation to publish said information within the obligations provided for in Chapter II of Title II in the matter of active advertising, nor is there any other specific rule that determines this, beyond what is provided in the same code of conduct, the list of subjects subject to active publicity is not a closed list, and the Administration has the duty to publish any matter that is of public interest (Article 8. m) LTC), notwithstanding that they are applicable the limitations provided by the same Law

The disclosure of said information will only affect the privacy of senior officials and managers. With the dissemination of this information, citizens can form a critical opinion on the actions of those responsible for public management and their adequacy to the rules of conduct to which they are subject. Their position as the most responsible for public management means that their right to privacy must yield to an obvious public interest in the transparency of their actions, which is why the publication of said information is justified.

Warning, however, that beyond having a legal basis for publishing it, it will be necessary to assess the degree of detail with which the information is published, and to take into account the principle of data minimization, a possible excessive impact on the privacy of the affected person or the possible risk to their safety. This is particularly relevant in the publication of information about invitations to events, travel, travel and accommodation referred to in letters b) and c).

VIII

Article 15 on publicity of Decisions and actions of legal relevance raises several issues.

The penultimate paragraph of section 3, in order to delimit the acts in which there are "reasons of special public interest" for the purposes of article 10.1.f) of the LTC, establishes that "It is understood that reasons of special public interest in administrative acts, statements or communications when they affect public health, public security, environmental protection, landscape and urban planning, consumer protection or the protection of historical, cultural or linguistic heritage, others.".

At the outset it must be said that it does not seem that it can be automatically concluded that any resolution issued in these areas automatically entails that there are reasons of special public interest. It won't always be like that. Especially if we take into account that the enumeration is actually an open list, given that it ends with the expression "among others".

On the other hand, and also for the purposes of article 10.1.f) LTC, the last paragraph of this section provides for the publication of all Government Agreements of the Generalitat. Nor does it seem that in this case the special public interest can be concluded automatically.

Beyond that, the article should include the provision of article 10.3 of the LTC which requires that in these cases the personal data or references have been removed.

Article 10.3 LTC refers that the information must not include personal data or references. The purpose of this provision is obviously that the affected people cannot be identified. It should be noted, however, that in order to avoid the identification of the affected persons, the removal of personal data may not be sufficient given that the context or the combination with other available information may end up making the person indirectly identifiable affected That is why it seems more appropriate to refer to the need to anonymize the information of the data of natural persons, interested or not, who are identified

in these resolutions, so that the affected people are not identifiable either directly or indirectly without disproportionate efforts. This without prejudice to being able to keep the merely identifying data of the person (officer or public employee) who dictates the resolution, the publication of which could be protected by article 24.1 LTC.

That is why it is proposed to replace these two paragraphs with others with the following wording:

"Without prejudice to other assumptions, it will be necessary to assess the concurrence of reasons of special public interest in the Government Agreements of the Generalitat. Also in administrative acts, statements or communications when they affect public health, public security, environmental protection, landscape and urban planning, consumer protection or the protection of historical, cultural or linguistic heritage.

The information referred to in this section must be published prior to the anonymization of the information on natural persons. "

These same considerations can also be extended to sections 4, 5 and 6 of this article and to sections 3, 5 and 6 of article 29.3 of the project.

On the other hand, and in the event that the article 11.ter proposed above is not incorporated, it could be good to add a section 7 that clarifies the scope of anonymization:

"7. To anonymize the information and documents that are published, it is necessary to eliminate the personal data of the affected persons, whether they are interested or not, contained therein and also any other information that may allow them to be identified directly or indirectly without disproportionate efforts. This without prejudice to being able to maintain, where appropriate, the merely identifying data of the position or public employees who dictate or intervene in the act or resolution."

Article 16 on publicity of the regulatory procedures currently being developed, provides in section 2 that for the purposes of letter d) of article 10.1 of Law 19/2014, of December 29, it must publish, among others, "the text or document of the contributions received" in the phases of prior consultation (letter a) and participatory citizen consultation (letter c), as well as the "allegations made" in the phase of audience and public information (letter d).

Section 3 adds that "The procedures relating to citizen participation, referred to in letters a), c) and d) of the first section of this article, must be accessible from the Portal de la Transparència de Catalunya. The information relating to the intervention or participation in the rule-making procedure of people who, in accordance with the applicable regulations, have the status of an interest group, if applicable, must be published in order to be able to know the identity of the interest group, the date of their participation, contact or influence, and a description of the terms or contents of their contributions and contributions to the text of the standard and the corresponding assessment."

Point out that beyond the disclosure of the identity of natural persons who are considered interest groups for the purposes of article 47 of the LTC, and other applicable regulations, the disclosure of the rest of the information personnel that may appear in the contributions or allegations presented (whether referring to the citizens or holders of rights and legitimate interests who present them or referring to other people who may be identified in the documents), does not seem to be justified. The disclosure of said information may affect to a greater or lesser degree the privacy of these people (depending on the detail of information they can provide) and may even go against the very purpose of the hearing or public consultation process , given that the degree of participation will predictably be greater if the prospects for privacy (non-identification of who has made the allegations) are greater. In

in fact, the LTC article only refers to "the relationship and assessment of documents originating" in public information and participation processes. What may be relevant in this case is knowing the content of the contributions or allegations made, but this interest can also be satisfied without the need to sacrifice the privacy of the people who participate, and therefore their disclosure could be contrary to the principle of minimization.

In order to clarify this point, it is proposed to add a second paragraph to section 3 with the following wording:

"Without prejudice to the identification of the interest groups, the publication of this information must be done prior to the anonymization of the information on natural persons."

These considerations can also be extended to article 30.2 of the project.

IX

Article 20 refers to active advertising in contractual matters. At the outset, the considerations made in Legal Basis V of this report in relation to a new article 11.bis must be extended to this article.

Beyond that, paragraph 9 of this article 20, contains a discrepancy with the LTC that should be corrected. Article 9.h of the LTC establishes that the "list of positions occupied by staff assigned by the contract awardees must be published ... and also the dedication and remuneration regime of this staff and the duties due to term". In other words, what this article would request would be the publication of information similar to that which appears in the RLT regarding these workers. But at no time does it require the publication of the identification of these attached workers.

On the other hand, article 20.9 of the project refers to the "personnel relationship". In other words, it seems to refer to a nominal relationship of the affected people. Despite this, the last indent of the first paragraph of this section, clarifies that "The relationship will consist of an anonymized list of occupied jobs...".

In order to give this article greater internal consistency and with the wording of article 9.h) LTC, a relationship like the following is suggested:

"9. For the purposes of letter h) of article 9 of Law 19/2014, of December 29, the awardees of service contracts must communicate to the contracting body, in accordance with the format that it establishes, a in relation to the jobs that the service will provide in the dependencies of the Administration or public sector entity."

This consideration can also be extended to article 33.2 of the Project.

Article 22 regulates, the publicity of collaboration agreements and management assignments and provides: "For the purposes of letters a) and b) of article 14.2 of Law 19/2014, of the in section 1 and 29 of December, a list of current agreements and their eventual modifications must be published, which must include a link to the full text of the signed agreement or its modification, through the Register of Collaboration and Cooperation Agreements . A link to the official publication must also be published in the Official Journal of the Generalitat of Catalonia, if applicable."

Point out that article 14 of the LTC obliges to publish a) The list of agreements in force, with an indication of the date, the parties that sign them, the object, the rights and obligations of any kind that they generate and the period of validity.", but not its full text.

The collaboration agreements may contain personal data whose disclosure is unnecessary or not justified from the point of view of the purpose pursued with the rule. The LTC itself establishes the minimum content that must be disseminated, limiting it, in terms of personal data, to information about "the parties that sign them".
This, for the purposes of Article 5.1.c) of the RGPD, should cover only the identification of the persons acting on behalf of these parties. As already explained in Legal Basis V of this report, with respect to these people only the name, surname, position and entity to which they belong should be provided. In this sense, the publication of the agreements in their entirety could cause the disclosure of unnecessary personal data, and be contrary to the principle of data minimization.

For this reason, it is proposed to eliminate the mention of the full publication of the agreement and to draft this section 1 in the following terms:

"1. For the purposes of letters a) ib) of article 14.2 of Law 19/2014, of December 29, a list of current agreements and their eventual modifications must be published, which must include a link to text of the signed agreement or its modification, after anonymization of the personal data other than the identification with first and last names of the signatories, through the Register of collaboration and cooperation agreements. A link to the official publication must also be published in the Official Journal of the Generalitat of Catalonia, if applicable."

X

Article 23 on Subsidy Activity provides in section 2, that "the fulfillment of the duty to publish the information relating to subsidies and aid established in letter c) of article 15 of the LTC is made effective by sending of this information in the Registry of Subsidies of Catalonia", collecting the provision of article 96 bis. 4 of Legislative Decree 3/2002, of 24 December, which approves the revised text of the Public Finances Act of Catalonia (TRLFPC).

It adds in the second paragraph that the Transparency Portal must give access, through a link to the aforementioned Register, among others, to the concession resolution.

Point out that letter c) of article 15.1 LTC does not oblige to publish the concession resolution in its entirety but only the specific information referred to "the amount, the object and the beneficiaries.(...)", except for the case of subsidies and public aid granted for reasons of social vulnerability, in which the identity of the beneficiaries must be preserved.

Neither does Law 19/2013 on state transparency, nor the specific regulations on subsidies, that is, Legislative Decree 3/2002, of December 24, which approves the revised text of the Public Finances Law of Catalonia (articles 94 and 96 bis 4 TRLFPC), Law 8/2003, of 17 November, General Subsidies (18 and 20 of the LGS).

Obviously, the award decision must include the information referred to in article 15.1.c) LTC, but it can also include other personal information that is not relevant for transparency purposes. For all this, from the point of view of data protection regulations, a wording that gave more relevance to the information that must be made would be preferable

public under the terms of the LTC. In this sense, it is proposed to give the second paragraph of article 23.2 the following wording:

"The Transparency Portal of Catalonia must provide access, through a link to the Registry of Subsidies and Aid of Catalonia, to the regulations governing the subsidy or aid, to its regulatory bases, to the resolution approving the call, to its eventual modifications, to the information on the amount, the object and the beneficiaries of the subsidies and public aid granted with advertising and competitive competition or without."

Finally, it is important to point out that the preservation of the identity of the beneficiaries could be justified, not only in the case expressly provided for in article 15.1.c) of the LTC (subsidies and public aid granted for reasons of social vulnerability), but also when it involves disclosing data deserving of special protection under the terms provided for in article 23 of the LTC or 9 of the RGPD (eg subsidies or aid granted to people suffering from a certain disease) or in other circumstances in application of article 20.8.b) of the LGS, which also provides for limitations when the publication may affect honor or personal or family privacy and as provided for in the regulatory regulations.

To this end, it would be appropriate to add a new section 5 to this article with the following wording:

"It is necessary to preserve the identity of the beneficiaries in the case of subsidies and public aid granted for reasons of social vulnerability, or in any other case involving the disclosure of data deserving of special protection."

This observation would also be extended to article 36.

XI

Article 24 deploys the provisions of article 8.1.m) LTC, referring to the publication of frequently requested public information.

The fact that information is requested more or less frequently, does not in itself constitute a criterion that must determine the publication of information or not. In the event that any of the limits provided for in the LTC itself are met, by application of what is provided for in article 7.1 LTC, the information may not be published, regardless of whether it has been requested very frequently.

For this reason, it is recommended to modify the wording of article 24.1 of the project with the following paragraph:

"1. For the purposes of letter m) of article 8.1 of Law 19/2014, of December 29, the information units, which are defined in article 63 of this Regulation, must publish the public information requested frequently, unless there is a limit that prevents it."

XII

With regard to the provisions of Chapter II on the active advertising obligations of local bodies and their public sector, the considerations made in relation to the active advertising obligations of the Government of the Generalitat and its sector are given as reproduced public on the above grounds.

However, some additional observations are worth making:

Article 27.2 provides that for the purposes of letter e) of article 9.1 of the LTC, "The data to be published must refer, at least, to the announcement of the call, the bases, the announcements officials, the list of those admitted and excluded in each test or exercise of the process, and the identification of the selected person through the name and surname and the key, code or any other means used during the process, in accordance with the regulations of Data Protection.

Point out that the key or access code used during the process is for the exclusive use of those interested in the different processes for the purposes of being able to check the results of the tests in which they participate. The publication together with the first and last name (the conjunction "and" is used) makes the use of this code or key lose its meaning.

In any case, and given that this article raises similar issues to those analyzed with respect to article 13.3 of the project, it is proposed to replace the current wording with that which has also been proposed for article 13.3.

With regard to article 28.1, it should be clarified that the publication of data relating to the municipal political group must only be published in relation to elected positions, but not for the senior positions or managerial persons to which it also refers this article.

XIII

Title III regulates the right of access to public information.

In article 41.1, in the second paragraph, the expression "his name and surname or his company name, or the name and surname of the person who represents him" should be replaced by "his name and surname or its company name and, where applicable, the name and surname of the person represent

Article 41.3 states that "The identity of the applicant who has chosen the electronic channel for the submission of the application is proven through the identification mechanisms that have been made available for processing of the requests or communications of the procedure.

For this purpose, the admission of identification mechanisms based on an ordinary user record or that provide users with credentials of a low security level is sufficient."

The RGPD sets up a security system that is based on a prior analysis of risks in order to determine which security measures are necessary in each case (Recital 83 and Article 32). It must ultimately be guaranteed that no unauthorized treatments will occur (Article 5.1.f)) RGPD.

In the case of public administrations, the application of security measures is marked in any case by the criteria established in the National Security Scheme, approved by Royal Decree 3/2010, of January 8, which, currently, is being subject to review.

The first Additional Provision of the LOPDGDD on security measures in the public sector provides that:

"1. The National Security Scheme will include the **measures that must be implemented in case of processing of personal data ,** to **avoid its loss, alteration or unauthorized access**

authorized, adapting the criteria for determining the risk in data processing to that 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. (...)**

For all this, it is recommended to delete or modify the second paragraph of article 41.3 in the following sense:

"For this purpose, identification mechanisms will be provided based on an ordinary register of users or that provide users with credentials, in accordance with the criteria established in the National Security Scheme."

It would be necessary to modify the text of the Preamble in which special reference is made to this provision when referring to chapter I of title III.

On the other hand, in the last paragraph of article 41.3 it is not clear what the expression "in these cases" refers to.

In article 43.2 in the first and third paragraphs and in articles 45, 46, 47 and 48, for the proper understanding of its wording, it seems that there would be a lack of reference to the fact that the units of information refer to the units of information from the Administration of the Generalitat:

"... the information unit in the Administration of the Generalitat or the corresponding body in the rest of the public administrations..."

Or a more simplified wording like this:

"... the competent unit in matters of access to information..."

Article 47 refers to the possibility of accumulation of requests by the competent unit in matters of information. The regulation seems unnecessary given that it is already a possibility foreseen in Law 39/2015, of the 1st of October, of the common administrative procedure of public administrations (LPAC) but in the event that this article is maintained, it would be appropriate to include a reference to which article 40.5 LPAC also provides in order to guarantee the confidentiality of personal information when appropriate.

Article 48.1 regulates the hearing procedure for the affected persons. It would be good to clarify the cases in which individual notification can be replaced by a publication. Likewise, it must be taken into account that in certain cases, despite being a large group, the obliged subject may have communication channels to make the communication easily (for example a communication by e-mail to all the staff of an entity). In these cases it would not be justified to go to the publication.

Also note that article 31.3 LTC states that the transfer must indicate the reasons for the request. On the other hand, this section of the regulation raises it in an optional way ("if applicable").

On the other hand, the wording does not include the possibility, provided for in article 31 LTC, of revealing the identity of the applicant. On this issue, it would be good if the application forms for the right of access already provide for the possibility for the applicant to object to this disclosure.

In accordance with what has been presented, the following wording is proposed:

"1. The information unit or corresponding body in the rest of the Public Administrations must transfer the access request to the identified or easily identifiable third parties eventually affected by the access to the requested public information.

It is understood that the third parties eventually affected are identified or easily identifiable when the information unit or corresponding body in the rest of the Public Administrations knows their identity and has or can have a channel or way of contact, including a e-mail.

The transfer of the request must be done by sending a communication that must indicate the object, the reasons for the access request and, unless the applicant objects , the identity of the applicant. It must grant a period of ten working days so that third parties can have a look at the file relating to the access request and formulate in writing the allegations they consider, and it must be notified to the third parties. This procedure suspends the deadline to resolve.

Exceptionally and with reasons, the individual notification can be replaced by a publication on the notice board or by a communication to the representatives of the groups affected, in the following cases:

a) When the affected persons are not identified or easily identifiable. b) When the affected third parties constitute a large group and the communication individual by any means requires disproportionate efforts. c) When the contact details are not available."

Article 54 of the project regulates aspects related to limits. At the outset it must be said that a regulatory standard cannot regulate the limits in terms of access to information, especially when, as in the case of the right to data protection, we are dealing with a fundamental right. As the Constitutional Court has repeatedly recalled (for all STC 292/2000) the regulation of the right to data protection, and therefore any interpretation of the scope of this right as a limit to the right of access to information public, it must be done through a rule with the rank of law.

The second paragraph of article 54.1 establishes that for the purposes of determining the moment from which the information will cease to be affected by the application of limits, the body competent to resolve must take into account the retention periods of the documents established by the National Commission for Documentary Access, Evaluation and Selection (CNAATD).

In this respect it must be said that the inclusion of this second paragraph to determine the moment from which the limits cease to be applicable is an error. The determination of the moment from which a limit ceases to apply does not depend on the retention period established by the CNAATD for each documentary series in the documentary evaluation tables, but on what is established by the applicable regulations.

In this sense, this paragraph of the regulation is contrary to what is established in article 22.2 of the LTC, according to which, "The limits of the right of access to public information are temporary if so established by the law that regulates them, and they remain as long as the reasons that justify their application last.

This paragraph should therefore be deleted.

Thirdly, section 2 of article 54 establishes that "When the application of a limit is explicitly motivated in a report, this report must be actively made public.".
This provision, which in principle seems applicable to the obliged entity, but given the wording it could also be argued that it is applicable to the GAIP (especially with regard to the report that must be issued by this Authority for the purposes of article 42.8 of the LTC) can pose some problems for the protection of the limit that is precisely intended to be preserved.

When the applicability of a limit is analyzed in a report prior to the adoption of an access or denial resolution, it is necessary to analyze the information to which access is sought and the concurrent circumstances in the specific case. The purpose of the report is to provide the body that must adopt the resolution (the obliged entity in the first term, and the GAIP in the latter term) the elements of judgment necessary to make the appropriate decision. In the event that the final resolution appreciates the existence of the limit, in certain cases revealing the content of the report can be counterproductive, because the mere access of the person requesting (and even more reason for the rest of the people who could be accessed through publication) may disclose information that is concluded should not be accessible. The motivation for the resolution must be in the resolution itself, and care must be taken not to reveal in any case, even indirectly, information affected by the limit. For this reason, it is proposed to delete this section or, at the very least, modify th

Therefore, if this section is maintained, the following wording is proposed:

"2. When the application of a limit is explicitly motivated in a report, this report must be actively made public, after anonymization. Exceptionally, the report may not be published when, despite the anonymization, it may end up revealing information affected by the limit that the applicant or third parties may relate to identifiable natural persons."

Article 55.1 establishes that "For the purposes of what is provided for in Article 23 of Law 19/2014, of December 29, the exceptions to the denial of access to information that contains specially protected data must be protected in the current regime regarding the protection of personal data.". It seems that the introduction of this section in the regulation would be linked to the approval of the RGPD which has introduced some modifications with respect to the categories of data that were previously contemplated in article 7 of the LOPD. It must be said, however, that a regulation cannot alter what is already established in article 23 o Article 23 of the LTC instead of incorporating a list of the categories of data it referred to could have incorporated a reference to the categories of special protection in the data protection regulations. But it did not do so, with the result that a regulatory rule cannot now modify what is established in Article 23. A rule with the rank of law could modify Article 23 to adapt it to the new special categories of data (as the eleventh Final Provision of Organic Law 3/2018 has done) but not a regulatory standard.

Section 3 of article 55 establishes that "When in application of the reasoned weighting of article 24.2 of Law 19/2014, of December 29, access to public information containing personal data is denied, the Public Administrations, in application of the principles of proportionality and partial access, must give access to the rest of the information, after anonymization or pseudonymization of this data."

There may be cases in which, due to the type of information requested or the degree of knowledge the applicant may have regarding the information requested, it is not possible to anonymize or pseudonymize the data. For this reason, it would be appropriate to point out this possibility, adding at the end of the paragraph the mention: "... whenever this is possible."

On the other hand, the second paragraph of article 55.3 includes a concept of anonymization that does not meet the requirements in terms of data protection, since it may not be sufficient to delete personal data, but it is necessary to delete any information that can identify or make identifiable a natural person. For this reason, it is proposed to delete the second paragraph of this section and incorporate the article 11.ter to which we have already referred.

Section 5 of article 55 provides that the Commission for Guaranteeing the Right of Access to Public Information, the Catalan Data Protection Authority and the Commission for Documentary Access, Evaluation and Selection must meet with a minimum annual frequency in order to adopt homogeneous and coordinated application criteria between the regimes for the protection of personal data and access to public information.

In the event that it is considered necessary to maintain a provision of this nature, it should not be part of the articulated text, but in any case an additional provision.

With regard to article 56.4.c) it is proposed to replace the expression "the obligation to act in accordance with the data protection regulations" with the expression "the obligation to treat the information received from in accordance with data protection regulations."

Article 59 develops Article 16 of the LTC relating to reuse.

Article 59 imposes on the obliged subjects, the obligation to provide people with access to public information, whether it is the subject of active publication or of the exercise of the right of access in a reusable format, with the aim of being able to be exploited through its reproduction and dissemination by any means, in such a way as to allow the creation of information products or services with added value based on public data.

It is important to emphasize that even if the LTC legitimizes the treatment of certain personal data (either through publication on the transparency portal or through the recognition of the right of access to said information), the decision on subsequent treatment that is made must to be adjusted and respectful of data protection regulations - as provided for in article 4.6 of Law 37/2007, of November 16, on the reuse of public sector information (LRSIP) and article 15.5 of the Law 14/2013- and take into account, especially, the principles of purpose limitation (art. 5.1.b RGPD) and minimization (art. 5.1.c) RGPD).

This implies that the general obligation to reuse is not automatic with respect to information containing personal data. Before deciding whether to provide said information for reuse, a thorough assessment must be made to determine whether this personal data is

they can reuse, and if so, under what conditions and with what specific guarantees this reuse can be allowed.

Precisely for this reason, article 16.1 of the LTC subjects the obligation to facilitate the reuse of information to the limits established by the regulations on reuse in the public sector. And in this sense, article 4.6 of Law 37/2007 establishes that "The reuse of documents containing personal data will be governed by the provisions of Organic Law 15/1999, of December 13, on data protection of a personal nature."

Taking this into account, it would be advisable to add to article 59, an indent that captures the subjection to the limits that derive from the reuse legislation, as article 16.1 of the LTC does:

"1. Obliged subjects must provide people with access to public information, whether it is the subject of active publication or the exercise of the right of access to information, in a reusable format, with the aim of being able to be exploited through its reproduction and dissemination by any means, in such a way as to allow the creation of value-added information products or services based on public data within the limits established by the regulations on the reuse of public sector information.".

Finally, article 60 establishes as a general rule the subjection of reuse to the Open License of Use of Information-Catalunya or creative commons licenses and establishes the minimum conditions that must be met.

Section 2.f) refers to information that is provided in a dissociated manner but that may allow the reversal of the dissociation process. In order to make it clear that the reversal of anonymized or pseudonymized information should not be possible, the wording of this article should be modified:

"f) When the information has been provided in an anonymized or pseudonymized manner, it must include the prohibition to carry out activities tending to reverse the process of dissociation by adding new data obtained from other sources.".

Conclusions

Having examined the Draft Decree of the Regulation for the partial development of Law 1/2014, it would not be contrary to the provisions established in the personal data protection regulations if the considerations made in this report are taken into account.

Barcelona, November 5, 2019