

PD 15/2019

Report on the Draft Decree approving the Regulation of Law 18/2015, of July 29, on agri-food interprofessional organizations

A letter from the Department of Agriculture, Livestock, Fishing and Food is presented to the Catalan Data Protection Authority in which it is requested that the Authority issue a report on the Draft Decree approving the Regulation of the Law 18/2015, of 29 July, on agri-food interprofessional organizations.

Having examined the Draft Decree, taking into account the current applicable regulations, and having seen the report of the Legal Counsel, the following report is issued,

Background

Law 18/2015, of July 29, on interprofessional agri-food organizations (hereinafter, Law 18/2015), establishes the regulatory framework that allows the recognition of these organizations in Catalonia, so that they can agree and obtain the extensions of standards appropriate to the particular conditions and needs of the corresponding sector and which contribute directly to the general development of the agri-food sector.

The third final provision of the Law establishes the need to carry out its regulatory deployment. The draft decree analyzed here approves the Regulation of Law 18/2015, of July 29, with the aim of "giving a new impetus to the means of structuring the private interprofessionals of the Catalan agri-food sector, in order to allow the organization, cohesion and collaboration in relation to the objectives of modernization, development, competitiveness and internationalization."

The draft decree foresees, among others, the regulation of the recognition procedure of the agri-food interprofessional organizations, the procedure for the approval of their extension of rules, as well as the development of the Register of the agri-food interprofessional organizations of Catalonia .

Legal Foundations

I

(...)

II

The Draft Decree establishes as its object in its article 1 "the regulatory deployment of Law 18/2015, of July 29, on interprofessional agri-food organizations".

Article 1 of Law 18/2015 establishes that the purpose of the Law is to "regulate the recognition and purposes of the interprofessional agri-food organizations of Catalonia and the approval of the extension agreements adopted in the scope of these organizations."

According to article 2 of the Law, they are interprofessional agri-food organizations, which:

"a) They are legally constituted, have their own legal personality and private legal nature, do not have a profit motive and fulfill the purposes established by this law. b) They are integrated by organizations representative of production and, at least, also of transformation, commercialization or agri-food distribution.

c) They have an area that does not exceed that of Catalonia.

d) They have their registered office in Catalonia."

In advance, it should be noted that this report is issued exclusively with regard to the assessment of the incidence that this project may have from the point of view of the protection of personal data, understood as "any information about an identified natural person or identifiable (the data subject). Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a name, an identification number, location data, an online identifier or one or more elements specific to the physical, physiological, genetic, psychological, economic, cultural or social identity of this person" (Article 4.1 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of 27 April of 2016, General of Data Protection (hereafter, RGPD)). Therefore, any aspect that does not affect personal data is outside the scope of this report.

In this sense, the processing of the data of legal entities is not subject to the RGPD, as specified by the RGPD itself, by establishing that "the protection granted by the present Regulation must be applied to natural persons, regardless of their nationality or place of residence, in relation to the processing of your personal data. This 4 Regulation does not regulate the processing of personal data relating to legal entities and in particular to companies established as legal entities, including the number and form of the legal entity and its contact details." (Recital 14).

Therefore, the data protection regulations would not apply to the data of the agricultural interprofessional organizations, nor of the entities that form them, since in accordance with article 2.b) of the Law the organizations professionals are integrated by "representative organizations of production and, at least, also of transformation, commercialization or agri-food distribution".

In this sense, chapter VI of the Project regulates the operation of the Register of interprofessional agri-food organizations created by Law 18/2015. In its article 14.1 it establishes that the inscriptions that will be carried out in the register will be those established in article 6.3 of Law 18/2015. Specifically:

"a) The recognition of interprofessional agri-food organizations. b) Withdrawals of recognition of agri-food interprofessional organizations c) Suspensions of recognition of organizations. d) The annual report of activities that includes the agreements whose object refers to what is established in articles 3 and 13. e) The state of representativeness at the end of the financial year. f) Agreements to extend rules. g) The annual accounts in relation to the agreements and liquidation of the financial contributions corresponding to the extension of the rule."

Therefore, personal data will not be registered in this register either.

III

Having said that, 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.

First, the Project examined details the different acts that can occur during the recognition or registration procedure of interprofessional organizations (for example, the application signed by all the organizations that form it or the articles of incorporation of the same, the responsible declarations that the member entities must present) and may involve the processing of personal data of the people who act as representatives of the interprofessional organization or of the entities that make it up. The personal data protection regulations would apply to the data of these representatives, but the project does not expressly provide for any treatment of their data that requires any additional consideration beyond the applicability of the LOPDGDD and the RGPD.

Secondly, article 4 of the Project provides that all the entities that form the agri-food interprofessional organization must prove their representativeness by submitting a declaration, signed by the entities, which states "the producers that represents the entity, with the indication of the name and surname, or company name, address, town and NIF" (article 4.3b)) and "the operators that represent the entity, with the indication of the name and surnames, or company name, address, town and NIF" (article 4.4).

From these provisions relating to the procedure for accreditation of representativeness, it is inferred, for the purposes concerned, that the exercise of accreditation functions will necessarily entail the processing of personal data of producers and operators, specifically, the first and last name, or company name, address, city and NIF. Therefore, the processing of the data of natural persons provided for in this project must comply with the provisions of the RGPD and Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter LOPDGDD).

Thus, from the point of view of the protection of personal data, the processing of this data must be lawful, loyal and transparent in relation to the interested party (article 5.1.a) RGPD). In this sense, article 6.1 of the RGPD provides that in order to carry out a treatment there must be a legal basis that legitimizes this treatment, either the consent of the person affected, or any of the other circumstances, such as

now that "the 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 person responsible for 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.e) of the RGPD when this is established by a standard with the rank of law.

Law 18/2015, of July 29, on agri-food interprofessional organizations, in article 4, provides that the department competent in agri-food matters must grant recognition to agri-food interprofessional organizations that request it and that comply a series of conditions, among which is that of accrediting a minimum representation and specifies that "the way of accrediting the representation must be established by regulation. This accreditation must be prior to recognition".

For these purposes, the legal basis that would enable agricultural interprofessional organizations to process the data of producers or operators (natural persons) of the various member entities of the agribusiness interprofessional organization derives from the provisions contained in the law that regulates the legal framework of these organizations and with the purpose of accrediting their degree of representativeness before the competent department in agri-food matters (article 6.1.e) RGPD).

It should also be remembered that the processing of this data must comply, among others, with the principles of purpose limitation (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).

In this case, the treatment of this data can be considered adequate to the data protection regulations to the extent that it is limited to the personal data detailed in sections 3.b) and 4 of article 4 (data merely identifying) and for compliance with the obligation to certify the representativeness attributed to them, in accordance with Law 18/2015.

conclusion

Having examined the draft decree approving the Regulation of Law 18/2015, of July 29, on interprofessional agri-food organizations, it is considered adequate to the provisions established in the regulations on the protection of personal data, provided that take into account the considerations made in this report.

Barcelona, November 8, 2019