

CNS 22/2020

Opinion in relation to the consultation of an educational Foundation on whether it is mandatory that the information on the privacy policy of the web page is available in all the languages in which the same web page is available.

A letter from a Foundation in the educational field (hereinafter, the Foundation) is submitted to the Catalan Data Protection Authority, in which an opinion is requested from this Authority in relation to the obligation that information about the policy of privacy of a web page is available in all the languages that the web page is also available.

Having analyzed the consultation, given the applicable regulations and the report of the Legal Counsel, the following is ruled:

I

(...)

II

The query refers to the "privacy policy" of the Foundation's website, which seems to clearly refer to the information that under articles 13 and 14 Regulation (EU) 2016/679, of April 27, general of data protection (RGPD), must be provided to the people from whom data is collected.

However, and for the purposes of focusing the query, it is necessary to distinguish this "privacy policy", as it is called in the query, from the "data protection policy" referred to in article 24.2 RGPD and which constitutes something broader. Thus, according to this article:

"2. When they are provided in relation to the processing activities, among the measures mentioned in section 1 will be included the application, by the controller, of the appropriate data protection policies."

At the outset, we note that the RGPD incorporates data protection policies in the context of taking technical and organizational security measures by the person in charge (principle of integrity and confidentiality, e.g. art. 5.1.f) RGPD) in compliance with the principle of proactive responsibility or "accountability", according to which it must be available to demonstrate correct compliance with data protection principles (art. 5.2 GDPR).

In connection with this principle, as can be seen from recital 78 of the RGPD, the manager must adopt "internal policies". Regarding the content of these data protection policies, it is not defined in the GDPR. It can integrate the security policy of the organization, but also other aspects. Thus, article 39.1.b) RGPD, in regulating the functions of the data protection delegate, and specifically his function of supervising compliance with the policies of the person in charge, refers to "the assignment of responsibilities, awareness and training of the personnel participating in the treatment operations, and the corresponding audits". Likewise, the

considering 78 of the specific RGPD that "These measures could consist, among others, of reducing the processing of personal data to the maximum, pseudonymizing the personal data as soon as possible, giving transparency to the functions and the processing of personal data, allowing the interested parties to supervise data processing and to the controller to create and improve security elements."

Without prejudice to the fact that each responsible entity carries out a prior analysis to specify the measures that should be included in its data protection policy, we can point out some aspects that could be part of the data protection policy, given the sectoral scope in what the query is formulated:

- Assignment of responsibilities within the structure of the organization (responsibilities of the management or direction of the entity, DPD, those responsible for security or information systems, those responsible for the different areas of the organization, etc.
- Training of the organization's staff in data protection. It should be borne in mind that, in a school organization, the different user profiles (teaching staff, administrative staff, management, medical or psycho-pedagogical services, extracurricular activities...) will process certain personal information of minors and their families. This makes it particularly relevant to articulate staff training and awareness in relation to the treatment of this information.
- Establishment of criteria on the treatment of the data collected from the people who visit the website, or forecasts related to the technologies that can be used and the security of the data, protocols for assigning permissions, managing passwords, audits, etc. These criteria must be known by the organization's staff, among others, with regard to the use of the organization's ICT resources, the use of email or other messaging services, the performance of telework, the use for teaching purposes of applications available on the market, or of videoconferencing systems, the dissemination of information about the school or the educational community and the students in social networks, etc.
- Establishment of security breach notification protocols (art. 33 and considering 85 RGPD). In this regard, we refer to the information available on the Authority's website (https://apdcat.gencat.cat/ca/drets_i_obligacions/responsables/obligacions/notificacio-de-violacions-de-seguretat/), as well as the " Guidelines on the notification of personal data security breaches in accordance with Regulation 2016/679", of 6.2.2018, of the Article 29 Working Group.
- Application of the principle of minimization (art. 5.1.c) RGPD), so that only the data necessary for each treatment are processed, and application of pseudonymization of information (art. 4.5 RGPD) when it is possible
- Determination of the retention time of the processed information. In relation to this, the considerations made by this Authority in Opinion CNS 42/2013, relating to the retention period of students' school records, may be of interest.
- Measures taken to inform those affected about the processing of their data (arts. 13 and 14 RGPD), with special attention in the educational field to the information that, where appropriate, must be provided to minors (art. 12.1 RGPD).
- Measures to adequately attend to requests for the exercise of rights by the affected persons (arts. 15 et seq. RGPD). Given the processing of data in the educational field, it would be of particular interest that data protection policies take into account how the Foundation should manage the exercise of rights, if applicable, by minors age (arts. 7 and 12.6 LOPDGDD).

- Regarding the possibility for the person in charge to choose one or more persons in charge of the treatment (art. 28 RGPD) to manage personal data, it would be appropriate for the data protection policies to establish the criteria for the selection of these managers, based on the basis that the person in charge can only resort to managers who offer sufficient guarantees that they will treat the data appropriately .

- Adherence to codes of conduct and certifications, brands and seals available to the person in charge (arts. 24.3, 40 and 42 RGPD; art. 38 LOPDGDD). In this sense, Guidelines 1/2019 on Codes of Conduct and Monitoring Bodies under Regulation 2016/679, available in English, dated June 4, are of particular interest. 2019).

- Regulatory regime and measures to be taken in relation to international data transfers (TID), taking into account the provisions of article 46 et seq. of the RGPD, and arts. 40 and s. of the LOPDGDD.

- Establishment of criteria and action protocols regarding the obligations derived from the applicable transparency regulations, among others, "To natural or legal persons who exercise public functions or administrative powers, who provide public services or who perceive public funds to operate or to carry out their activities for any legal title." (art. 3.1.d) LTC).

In any case, article 24.2 of the RGPD subjects the convenience of an organization to adopt data protection policies, to be "proportionate to the activities and the treatment", without establishing a "numerus clausus" or closed list of identical measures for all organizations, since this may depend on the area in which the entity operates, the treatments it carries out, the people affected, etc.

The way in which the duty to inform those affected is fulfilled can be part of the data protection policy of an entity or company, but it must be clearly distinguished from the specific content of the information that must be given to the people affected in the time of information collection, given that while the information in articles 13 and 14 RGPD must be provided to the affected persons, with respect to the data protection policy referred to in article 24.2, communication to the affected persons or its publication.

For this reason, we will consider that the query refers to the privacy policy for the purposes of articles 13 and 14 RGPD.

III

According to the query, the Foundation is dedicated to education and owns several educational centers in Catalonia.

The consultation requests an opinion from the Authority, in relation to the question of whether it is mandatory that the information on the privacy policy of a web page is available in all the languages in which the web page is also available.

If the query is placed in these terms, it is necessary to start from the basis that, according to article 4.1) of the RGPD, personal data is "all information about an identified or identifiable natural person ("the interested party"); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, data from

location, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person;

It is personal information subject to the principles and guarantees of data protection regulations (RGPD and Organic Law 3/2018, of December 5, Protection of personal data and guarantee of digital rights (LOPDGDD)), all that information referring to people physical, which the Foundation deals with in relation to its functions in the educational field (4.2) GDPR).

From the moment that the Foundation, as responsible (art. 4.7 RGPD), collects and processes data of natural persons, it must comply with the principles and guarantees of the data protection regulations, among others, the duty inform those affected.

At the outset, when the Foundation collects data from people who consult the information available on the corporate website, or when they fill out a form, it must inform the affected people about the purpose for which the data is collected, what treatment will do, and the rights they can exercise, among other issues, in the terms provided for in article 13 of the RGPD:

"1. When personal data relating to an interested party is obtained, the data controller, at the time it is obtained, will provide all the information indicated below:

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 officer, if applicable; c) the purposes of the treatment for which the personal data is intended and the legal basis of the treatment; d) when the treatment is based on article 6, section 1, letter f), the legitimate interests of the person in charge or of a third party; e) the recipients or the categories of recipients of the personal data, as the case may be; f) in its case, the intention of the person in charge to transfer personal data to a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of the transfers indicated in articles 46 or 47 or article 49, section 1, second paragraph, refers to the adequate or appropriate guarantees and the means to obtain a copy of these or the fact that they have been provided.

2. In addition to the information mentioned in section 1, the controller will provide the interested party, at the time the personal data is obtained, with the following information necessary to guarantee fair and transparent data processing:

a) the period during which personal data will be kept or, when not possible, the criteria used to determine this period; b) the existence of the right to request from the person responsible for the treatment access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to the portability of the data ; c) when the treatment is based on article 6, section 1, letter a), or article 9, section 2, letter a), the existence of the right to withdraw consent at any time, without it affecting the legality treatment based on consent prior to its withdrawal; d) the right to present a claim before a control authority; e) 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 are informed of the possible consequences of not providing such data; f) the existence of automated decisions, including the creation of profiles, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information on the logic applied, as well as the importance and expected consequences of said treatment for the interested party.

(...).”

Article 14 of the RGPD, to which we refer, provides the information that must be provided to those affected in the event that the data has not been collected directly from them.

Also, article 11 of the LOPDGDD includes the obligation of those responsible to inform those affected about the processing of their data, in line with the provisions of articles 13 and 14 of the RGPD, cited.

IV

The query refers specifically to the information that must be included in the "privacy policy" of the Foundation's website.

To situate the question raised, it must be borne in mind that every time users consult information on web pages, as could be the case of the Foundation, and register as users or fill in forms to request information, etc., they provide data to those responsible for this website.

In addition, when users consult web pages, data is often collected and stored automatically, such as, for example, IP addresses or "cookies" that store information about users and their browsing habits in the net.

It may also be common for websites to use web analytics tools that record and analyze traffic to a particular website. Thus, as this Authority has agreed in Opinion CNS 1/2008, the use by a manager of tools such as "Google Analytics", in order to improve the performance of a corporate page, as well as the information and the services offered to potential customers, may involve the processing of personal data, since, among others, the IP address must be considered personal data whenever it makes a specific natural person identifiable. If user navigation data is stored, this may allow the person responsible for a website to know the queries that are made on their website, their positioning in the network, etc. In short, this treatment makes it necessary for the person in charge to implement a privacy policy to adequately inform those affected about this treatment, and to guarantee the security of the data collected.

Taking this into account, those responsible for web pages must offer users an informative clause, or "privacy policy", referring to the use of the web by them, which informs about the person responsible for the treatment, the purpose and the legitimacy to use the data, the types of data that are collected, how they are collected, how they will be used and stored, or whether certain data will be communicated, or the rights that users have in relation to the use of your data, aside from the other aspects of article 13 RGPD.

In addition, it should be noted that, according to the eleventh additional provision of the LOPDGDD:

"The provisions of this organic law shall be understood without prejudice to the application of the rules of internal law and of the European Union regulating privacy in the electronic communications sector, without imposing additional obligations on natural or legal persons in this matter of treatment in the framework of the provision of public services of electronic communications in public communication networks in areas in which they are subject to specific obligations established in said rules."

Thus, it is necessary to take into account the provisions of Law 34/2002, of July 11, on services of the information society and electronic commerce (LSSI), which results from application to service providers of the society of the information established in Spain and the services they offer (art. 2.1 LSSI). The provisions of the LSSI thus apply to services related to or offered through the network when they involve an economic or lucrative activity for the person in charge.

Those responsible who offer their services (in the case we are dealing with, in the educational field), must provide certain information on their web pages when through these it is possible to request and receive information about the services that are offered, contract goods or services, or enable the sending of commercial communications based on the processing of personal data provided by users.

Article 10.1 of the LSSI provides that:

"1. Without prejudice to the information requirements established in current regulations, the information society service provider will be required to have the means that allow both the recipients of the service and the competent bodies to access by electronic means, permanently, easily, directly and free of charge, to the following information: a) Your company name or name; your residence or domicile or, failing that, the address of one of your permanent establishments in Spain; his email address and any other data that allows direct and effective communication to be established with him. b) The data of their registration in the Mercantile Registry in which, as the case may be, they are registered or in that other public registry in which they were for the acquisition of legal personality or for publicity purposes only. c) In the event that your activity is subject to a previous administrative authorization regime, the data relating to said authorization and the identifiers of the competent body in charge of its supervision. d) If you exercise a regulated profession you must indicate: (...). e) The corresponding fiscal identification number. f) When the information society service refers to prices, clear and accurate information will be provided on the price of the product or service, indicating whether or not it includes the applicable taxes and, where appropriate, on shipping costs. g) The codes of conduct to which, where applicable, it is adhered to and the way to consult them electronically.

2. The obligation to provide this information will be fulfilled if the provider includes it on their website or website under the conditions indicated in section 1. (...)."

Likewise, article 12 of the LSSI refers to the obligations and the liability regime of information society service providers.

Title III of the LSSI, referring to commercial communications by electronic means, provides, in article 19, that:

"1. Commercial communications and promotional offers will be governed, in addition to this Law, by its own and current commercial and advertising regulations.

2. In any case, the Organic Law 15/1999, of December 13, on the Protection of Personal Data, and its implementing regulations, in particular, as regards the collection of personal data, will apply. information to interested parties and the creation and maintenance of personal data files."

Please note that the Regulation of the European Parliament and of the Council on respect for private life and the protection of personal data in the electronic communications sector, which repeals Directive 2002/58/EC (Regulation on privacy and electronic communications). This draft Regulation provides for the establishment of rules relating to the protection of the rights and fundamental freedoms of natural and legal persons in the field of the provision and use of electronic communications services and, in particular, the rights in respect of private life and communications and the protection of natural persons with regard to the processing of personal data (art. 1.1) and, therefore, it will be necessary to take it into account from the moment of its approval, in the scope that concerns us

In short, those responsible for services or products offered through web pages must comply with the obligation to inform those affected in terms of articles 13 and 14 RGPD and the provisions of the LSSI.

v

For the information available, the Foundation's website includes, on the one hand, a "Legal Notice", which includes different sections, among others, those relating to the "Identification of the domain owner" (the Foundation), in the "Conditions of use of the website", or in the "Privacy", in which reference is made to the information provided for in article 13 of the RGPD, the security of the data collected from users who consult the website, or on the use of IP addresses and "cookies" and on the collection of statistical data, or on links

On the other hand, the Foundation's website also contains the "Privacy Policy" section, which includes information related to the data controller or the purpose of data processing, among others.

En qualsevol cas, als efectes que interessa, i tot i que el web inclou informació general en català, castellà i en anglès, la informació inclosa específicament en els apartats "Avís legal" i "Política de privacitat" del web de la Fundació, es found only in Catalan.

At this point, it is worth remembering that, according to article 12.1 of the RGPD: "1. The person responsible for the treatment will take the appropriate measures to provide the interested party with all the information indicated in articles 13 and 14, as well as any communication pursuant to articles 15 to 22 and 34 relating to the treatment, in a concise, transparent, intelligible and easily accessible form, with a clear and simple language, in particular any information directed specifically to a child. The information will be provided in writing or by other means, including, if appropriate, by electronic means. (...)."

In the same sense, recital 58 of the RGPD.

Although the regulations do not specify the languages in which the information must be given to those affected, from the moment that the website information about the activities of the person in charge is provided

in different languages, it can be inferred that the Foundation will be offering its educational services to families who have a greater understanding in one of these languages. The information that is required to be provided on the processing of personal data of those affected who consult the website, must be comprehensible and intelligible by all these people, as this is required by the principle of transparency (art. 5.1.a) RGPD).

It may be common to use cookies or data for statistical purposes, from a specific visit to a web page. In these cases, where users may not be aware of the collection and processing of their data - since this occurs automatically - it is particularly important that the information on the processing produced is clear and understandable.

At this point, we mention the "Directives on transparency under Regulation (EU) 2016/679", of April 11, 2018, of the Article 29 Working Group (currently European Data Protection Committee or CEPD (art. 68 RGPD), https://edpb.europa.eu/edpb_es), specifically, in sections 12 and 13 of the Guidelines, which explain what it means to use "clear and simple language" to provide information to those affected. Specifically, section 13 of the Guidelines provides that:

"(...). The information provided to an interested party must not contain language or terminology of an excessively legal, technical or specialized nature. When the information is translated into one or more different languages, the controller must guarantee that all translations are faithful and that the phraseology and syntax make sense in the second language so that the translated text must not be deciphered or reinterpreted (a translation into one or more languages must be provided when the person responsible for the treatment addresses interested parties who speak those languages)."

Des del moment que la Fundació ofereix informació general en diversos idiomes, es pot deduir que la Fundació pretén informar i oferir els seus serveis educatius a famílies que poden tenir una major facilitat per entendre un d'aquests idiomes (català, castellà i anglès, segons available information).

In these cases, whether the affected themselves provide personal data - for example, by filling in a form - or whether the mere consultation of the web involves automatic data processing (storage of IP addresses or browsing habits, use of cookies, etc.), the principle of transparency (art. 5.1.a) RGPD) requires that users receive adequate and comprehensible information about the processing of their data, that is, in the language that allows them to better understand the processing that will take place the Foundation with its data.

In short, so that the information provided can be considered transparent, understandable and easily accessible, the Foundation must provide the information included in the Legal Notice and Privacy Policy sections of the website in all the languages used on the website to provide general information about its activities and services in the educational field.

In accordance with the considerations made in these legal foundations in relation to the query on whether it is mandatory that the information on the privacy policy of a web page is available in all the languages in which the web page is also available, the next,

Conclusions

In application of the principle of transparency (art. 5.1.a) RGPD), and given the provisions of the regulations (RGPD, LOPDGDD and LSSI), the Foundation must provide the information included in the sections "Legal notice" and "Policy of privacy" of the web in

all the languages

website to provide general information about its activities and offers in the educational field.

Barcelona, July 8, 2020

Machine Translated