

Ref.: PD 4/2020

Report on the Draft order approving a new version of the application of the Electronic Procurement File Manager (GEEC)

Background

A letter from the Vice-President of the Government and Minister of Economy and Finance is presented to the Catalan Data Protection Authority, in which it is requested that the Authority issue a report on the draft order approving a new version of the application of the electronic Manager of procurement files (GEEC), so that the Authority issues its opinion on it.

Analyzed the Project, taking into account the current applicable regulations, and in accordance with the report of the Legal Counsel, is informed of the following:

Legal Foundations

I

(...)

II

The Draft order under consideration, which consists of a preamble, a total of five articles, an additional provision, a repealing provision and a final provision, aims to approve a new version of the Electronic Manager application of 'procurement files (GEEC).

The previous version of the application of the electronic manager of procurement records had been approved by Order ECF/193/2008, of April 29, 2008. The statement of reasons for this order refers to the Government Agreement of September 5, 2006 by which "it was entrusted to the Department of Economy and Finance, through the Consultative Board of Contracting

Administrative and with the collaboration of the Center for Telecommunications and Information Technologies, the direction and management of the project of design, construction and implementation of an Electronic Manager of Procurement Records of a corporate nature (GEEC)". According to this assignment, the GEEC had as its objective "to become the back office of the public procurement of the Generalitat de Catalunya and will allow the management of the type of contracts provided for by the current contract legislation and the adaptation to the specific needs of each department and organizations".

In the case of the draft order that is now being reported, as stated in the statement of reasons, it is a "technological transformation of the GEEC, which entails a change in technology from the SAP environment to a web solution, with a more usable and intuitive design to facilitate and improve the management, monitoring and information of the Generalitat's public procurement".

Likewise, the statement of reasons refers to the fact that the legislation on public procurement, from the Community directives to the laws transposing these directives, protect the electronic processing of procurement files.

From the point of view of data protection regulations, the management of public procurement files involves the processing of a significant amount of personal data, understood as *"any 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 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 the RGPD).

Excluded from this scope of protection are the data of legal entities, as specified by the RGPD itself, establishing that *"The protection granted by the present Regulation must apply to natural persons, regardless of their nationality or place of residence , in relation to the processing of your personal data. This 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), but not so the data of natural persons who provide services in a legal entity, and the data relating to individual entrepreneurs and liberal professions, the treatment of which is subject to the RGPD.

Therefore, it can be foreseen that this manager will process data of public employees in charge of management, of the holders of contracting bodies and of contractors or persons linked to them, such as: name and surname, NIF/DNI/Passport/NIE , postal or email address, no. SS/mutuality, telephone, electronic signature, handwritten signature, bank details, employment details, economic and solvency details, commercial information details: services provided, employment period, academic and professional details: CVs, etc.

The RGPD defines data processing as *"any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enabling access, sharing or interconnection, limitation, deletion or destruction."*

The processing of this data by the bodies responsible for the administrative recruitment of the Generalitat and its public sector as well as independent or statutory bodies may have as a legitimate basis the letters c), *"the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment"*, or the letter e), *"the treatment is necessary for the fulfillment of a mission carried out in the interest public or in the exercise of public powers conferred on the person in charge of the treatment"*, of article 6.1 of the RGPD, in relation to the LCSP and the transparency legislation, among others.

It is worth noting that the draft order does not make any reference to the data protection regulations to which the treatments carried out through this management tool must comply, although it is necessary to remember the importance of taking into account the protection of data from the design and for

defect in the design and implementation of these applications, as required by article 25 RGPD. On this matter, we refer to what follows from [Directives 4/2019](#) of the European Data Protection Committee on Article 25 data protection by design and by default

III

Article 2 of the draft order establishes:

"2.1 Through the Electronic Manager of procurement files (GEEC), the departments of the Administration of the Generalitat and the public sector entities that depend on it or are linked to it, must process all of their public procurement, with regardless of the type of files and the procedures, forms and instruments used for adjudication.

Likewise, independent and statutory bodies that request it will be able to use this tool as processors of their procurement records.

(...).

It should be borne in mind that with regard to the responsibility for personal information that is processed through the GEEC, the position of the body of the Department of the Vice-Presidency, Economy and Finance it can be different depending on the case.

Article 4.7 of the RGPD defines the data controller as *"the natural or legal person, public authority, service or any other body that, alone or together with others, determines the purposes and means of the treatment; if the law of the Union or of the member states (in) determines the purposes and means of the treatment, the person in charge of the treatment or the specific criteria for his appointment may be established by the law of the Union or of the member states"*.

On the other hand, article 4.8 of the RGPD defines the data controller as *"the natural or legal person, public authority, service or any other body that processes personal data on behalf of the data controller"*.

In the case at hand, and to the extent that the use of the platform is imposed on the Departments of the Administration of the Generalitat and on public sector entities as mandatory, it would seem that in principle the position of the responsible body of the GEEC would be that of a person responsible for the treatment, given that the treatment carried out through the GEEC would not be the result of a previous order by the Department or the public sector entity responsible for the treatment of the information of the contract file but the result of a regulatory provision and therefore binding. However, it should be borne in mind that the Department or public sector body that processes the procurement procedure will continue to be responsible for the information that is part of the procurement file, although in reality, in this case, all the information that it will have on the procurement files it seems that it will be part of the GEEC. Faced with this, we would be faced with two data controllers: on the one hand, the department or body of the public sector that processes the procurement file, which would be responsible for the data that is part of the file; on the other hand, the body responsible for the GEEC that would be responsible for the data properly associated with the operation of the GEEC.

This circumstance can introduce some distorting elements when determining the applicable security measures, as well as the fulfillment of other obligations (for example the fulfillment of the duty of information) or the attention of rights.

Taking this into account, it would be possible for the same order to clarify these issues by establishing which entity is responsible for each of these aspects, or it could refer to the subsequent adoption of the agreement referred to in article 26 RGPD to delimit the responsibilities of the various data controllers.

Despite what has just been stated, in the case of independent and statutory bodies, insofar as the use of the GEEC is not imposed by a rule but would in any case be the result of a decision by the entity of the responsible for the treatment, the body responsible for the GEEC would not be responsible for the treatment but only a person in charge of the treatment, prior to the establishment of the agreement referred to in article 28 of the RGPD.

v

Article 3.1 of the draft order regulates access to the application in the following terms:

"Users who access the application are authenticated through the Generalitat's Identity Manager and Corporate Resource Access Control (GICAR).

The application provides access to the system for all units involved in the management of procurement files: procurement bodies, procurement units, promotion units, legal advice, documentation and archive units. They also have access to consult the files, without directly accessing the application, the other users who take part in the processing, such as those from financial management, the Intervention or managerial positions, through the Viewer module. "

With respect to this provision, by virtue of the principles of privacy by design and by default and with regard to the possibility of access to the application of different user profiles with different functions and responsibilities, remember that the system has to incorporate the necessary mechanisms to guarantee that the access of these users will only be carried out with respect to that information that is necessary for the development of the functions attributed to them, and compliance with the principles of minimization of personal data (adequate, relevant and necessary for the purpose for which they are treated, article 5.1.c) RGPD) and to the principle of integrity and confidentiality (the data must be treated in such a way as to guarantee adequate security, including the protection against unauthorized or illegal treatment and against its loss, destruction or accidental damage through the application of appropriate technical and organizational measures, article 5.1.f) RGPD).

v

Article 4 of the draft Order regulates the integration of the GEEC with the corporate applications of the Generalitat de Catalunya and the information systems of other administrations linked to the public procurement process.

As already explained, the definition of data processing in the RGPD includes "*communication by transmission, dissemination or any other form of enabling access, access or **interconnection**, limitation, deletion or destruction*". Thus, the integration of the manager with other information systems that involve a flow of information that contains personal data, must be carried out respecting the principles relating to the treatment established in the RGPD, both the principle of legality and the other principles, especially the one of minimization and limitation of the purpose.

In the case, for example, of the integration and subsequent communication of data in the Register of Public Sector Contracts, the legality of the treatment would be given by article 6.1.c) of RGPD in relation to article 346 of LCSP and article 13 and the eighth additional provision of Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC).

And, in the case of data integration and communication in the Recruitment Services Platform Public, the legality of the treatment would be given by article 6.1.c) of RGPD in relation to the article 347 of LCSP and Article 13 and the eighth additional provision of LTC.

It is worth recalling at this point the recommendations of this Authority regarding the application of the principle of minimization to these treatments. Thus, with respect to the dissemination of identifying data in compliance with the advertising obligations established in the LCSP, this Authority has expressed itself in the sense that it should include only the first and last names of the bidders and successful bidders, as well as the name, surnames and position of the public worker who intervenes by reason of the position or functions, with the implications that this has in relation to the dissemination of documents signed with an electronic signature, which should adopt one of the mechanisms proposed in Opinion CNS 1/ 2019, which is complemented by the CNS Decree 12/2020 regarding the publication of this information while giving adequate compliance with the requirements of the legislation on accessibility for people with disabilities (in case of visual impairment). These opinions can be consulted on the website www.apdcat.cat

And, with regard to the description of the object of the contract, and the personal data they may contain for advertising purposes, it is appropriate to remember the recommendations of this Authority collected in Opinion CNS 57/2016 (prior to the validity of RGPD), where it is made clear that beyond the identifying information (name and surname) relating to the natural person who has been awarded the contract, it does not seem that the inclusion of other personal data in the subject of the contract is necessary in all cases to achieve the purpose of advertising pursued.

VI

Finally, with respect to this information system, it should be remembered that, in the case of public administrations, the application of security measures must take into account, at least, the criteria established in the National Security Scheme. In this regard, the first additional provision of the LOPDGDD provides that:

"Security measures in the public sector.

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

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.

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

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

Conclusions

Having examined the draft order approving a new version of the application of the electronic manager of procurement files (GEEC), it is considered adequate to the provisions established in the regulations on personal data protection, provided that take into account the considerations made in this report, in particular the one provided for in ground III of this report.

Barcelona, June 26, 2020