

PD 7/2020

Report on the Draft Decree approving the Regulation of the Official Journal of the Generalitat de Catalunya.

Background

The Draft Decree approving the Regulation of the Official Journal of the Generalitat de Catalunya is presented to the Catalan Data Protection Authority in order for a report to be issued.

Having analyzed the Project, which is not accompanied by any other documentation, taking into account the current applicable regulations, and in accordance with the report of the Legal Counsel I issue the following report:

Legal Foundations

I

(...)

II

The draft Decree that is submitted to report has as its object the approval of the Regulation that regulates the Official Journal of the Generalitat of Catalonia (DOGC), in implementation of Law 2/2007, of June 5, of the Official Journal of the Government of Catalonia. This Decree will replace the Regulation approved by Decree 129/2010, of September 21.

The aim of the project, as stated in the preamble, is to review certain aspects of the publication process, to simplify the process and respond to new requirements and the evolution of technological means, as well as to improve the formal and linguistic adequacy of published documents and legal certainty and, in particular, a modification of the structure of the Journal with the creation of a supplement of notification announcements.

With regard to the protection of personal data, it is stated that it is intended to guarantee its protection in the documents published in the DOGC and to ensure that only indispensable data are published.

The project repeals, among other provisions, Order PRE/185/2011, of July 19, on the creation, modification and deletion of files containing personal data within the scope of the Entity Autonomy of the Official Journal and Publications of the Generalitat of Catalonia, an aspect that must be positively assessed, given that following the entry into force of the RGPD it is not necessary to create

of the personal data files through a general provision, and maintaining the validity of this Order could generate legal uncertainty given that currently the instrument that must describe the processing of personal data carried out by the Entity of the Official Journal of the Generalitat of Catalonia, it is the record or inventory of processing activities (art. 30 RGPD and 30 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD).

In any case, different types of administrative acts and documents published in the DOGC may incorporate personal data, therefore, taking into account the repercussions that may arise for the natural persons affected by the publication, it is appropriate to take into account the principles and the guarantees of the personal data protection regulations.

III

Article 8 of the Project regulates the DOGC notification announcement supplement. The creation of this supplement entails a limitation of access to its contents, both from the point of view of the people who must be able to access it, and from the point of view of the temporary period of publication of these advertisements (three months).

The creation of this supplement must be positively assessed from the point of view of the right to data protection and, in particular, of the principles of minimization and temporal limitation of data conservation (art. 5 RGPD). Equally, the provision to adopt measures to avoid the indexing and retrieval by automatic systems of the verification codes of the advertisements by subjects other than those provided for by the same article must be positively assessed, even though the non-indexing should refer not only to ad verification codes but also to ad content. We will refer specifically to this issue in the comment to article 18.2 of the Project.

In any case, some observations should be made regarding this supplement:

First of all, to point out that once the period of three months has passed since the publication, the Project foresees that it will only be possible to access it through a URL provided by the managing entity of the DOGC to the issuing subject. Without prejudice to the correction of this forecast, it would be good to clarify which other subjects, apart from the issuing subject, must be able to access the information once the three-month period has passed. At the very least, it seems that the interested person, the courts and tribunals and the other authorities that require it for the exercise of their powers should be able to access it.

Secondly, it is indicated that "The right of conservation, storage and treatment of this address corresponds to the interested person or his representative, as well as to the bodies and administrations that are necessary within the scope of their powers." , but on the other hand, the way in which the interested person can know this URL address, once the three-month period has passed, is not foreseen.

Thirdly, regarding the content of notification announcements, it is necessary to take into account the provisions of the seventh Additional Provision of the LOPDGDD.

The first section of this provision establishes the following:

"1. When it is necessary to publish an administrative act that contains personal data of the person affected, it will be identified by means of his name and surname, adding four random numerical digits from the national identity document, foreigner's identity number, passport or equivalent document. When the publication refers to a plurality of those affected, these random figures must be alternated.

When it comes to notification through announcements, particularly in the cases referred to in article 44 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, the affected person will be identified exclusively through the full number of your national identity document, foreign identity number, passport or equivalent document.

When the affected person lacks any of the documents mentioned in the two previous paragraphs, the affected person will be identified solely by means of their number and last name. In no case should the number and surname be published together with the full number of the national identity document, foreign identity number, passport or equivalent document."

In accordance with the provisions of the second paragraph of this section, in the advertisements that are published in this section in which the interested person is a natural person, the advertisement must be published identifying him exclusively through the full number of the ID card or equivalent. For this reason, and without prejudice to the fact that a general reference to the principle of data minimization has already been included in article 18.1 of the Project, it would be good to provide in this article that the advertisements must identify the recipients of the notifications exclusively through your full ID number or equivalent.

Finally, it is also appropriate to take into account the second section of the aforementioned Seventh Additional Provision of the LOPDGDD. This paragraph states the following:

"2. In order to prevent risks for victims of gender-based violence, the Government will promote the development of a collaboration protocol that defines safe procedures for the publication and notification of administrative acts, with the participation of the bodies with competence in the matter."

In this sense, it could be good to provide in this article 8 that the publication of advertisements that may affect people who are victims of gender violence, must be carried out in accordance with the protocol established by the Government.

IV

The project also contains several provisions aimed at controlling the correctness of documents sent for publication.

At the outset, the provision contained in article 11.2 of the Project must be positively assessed, according to which "The managing entity of the DOGC may require that the provenance of publishing a

document in the case that it considers it necessary for the fulfillment of the previous obligation.". This contribution can contribute to preventing the publication, among others, of acts that contain personal data in respect of which publication is not justified. In the same sense, the provisions of article 16.2 and 16.3 are appropriate.

However, it should be borne in mind that the responsibility for correcting the advertisements sent for publication rests with the issuing entity. In this sense, article 16.1 of the Project provides that "The issuing entity must ensure the formal and linguistic adequacy of the documents to be published, in accordance with the criteria published on the website of the DOGC's managing entity.". The forecast is fully compatible with data protection regulations, but do not take into account that the responsibility of the issuing body covers not only the correction from a formal and linguistic point of view but also the legal aspects.

On the other hand, the provisions of articles 11.2, 16.2 and 16.3 of the Project can help to ensure these aspects, but it must be taken into account that there may be cases in which the incorrectness of a certain publication is not immediately appreciated, but that is appreciated once the publication has already taken place, or that an interested person has subsequently exercised their rights of deletion (art. 17 RGPD), rectification (art. 16 RGPD) or opposition (art. 21 RGPD) .

It may also happen that the Catalan Data Protection Authority or a court has agreed to the rectification, deletion of the publication or the limitation of its accessibility as a consequence of the aforementioned rights of rectification, deletion or opposition, or as a consequence of a sanctioning procedure (letters f) ig) of article 58.2 RGPD).

For this reason, it would be appropriate for article 16.1 to also refer to legal correction and to make it clear that it is up to the issuing entity to attend to the rights of access, rectification, deletion and opposition regarding the published data. This without prejudice to the fact that the right of opposition can be exercised before the Entity that manages the DOGC when the opposition is to prevent the content of the published documents from being indexed by external search engines.

Along these lines, the following wording is suggested for article 16.1:

"The issuing entity must ensure the formal, linguistic and legal adequacy of the documents to be published, in accordance with the criteria published on the website of the DOGC's managing entity."

And it is also suggested to add an article 17.3 with the following wording:

"3. The rights of access, rectification, deletion, limitation of treatment and opposition provided for in the personal data protection regulations can be exercised before the issuing entity of the published document. If they are exercised before the managing entity of the DOGC, this entity must transfer the request to the issuing entity as soon as possible, and always within 10 days. This without prejudice to the fact that it is the responsibility of the DOGC management entity to attend to the right of rectification for errors attributable to the services of the DOGC management entity or the right of opposition when it aims to limit access to published documents.

The issuing entity must communicate to the managing entity of the DOGC its estimated resolutions of any of these rights or, where appropriate, those issued by the Catalan Data Protection Authority or the courts and tribunals, so that make them effective. "

On the other hand, with respect to article 17.1, the rectification of errors attributable to the services of the DOGC should be possible not only ex officio but also at the request of a party, either at the request of the issuing entity or the interested person .

v

Article 18.1 of the Project refers to the principle of data minimization (art.5.1.c) RGPD).

The forecast must be evaluated positively, although the article could be completed with the forecasts of the first paragraph of section 1 of the seventh Additional Provision of the LOPDDD to which we have already referred, and also the guidelines established by the Catalan Data Protection Authority for those cases in which the publication requires identifying the affected persons.

Ens remetem sobre això a l'Orientació per a l'aplicació provisional de la disposició addicional setena de l'LOPDGDD aprovada conjuntament per l'Autoritat Catalana de Protecció de dades, l'Agència Espanyola de Protecció de Dades, l'Agència Basca de Protecció of Data and the Andalusian Data Protection and Transparency Council, which can be consulted on the Authority's website (<https://apdcat.gencat.cat>).

For this reason, it is proposed to add a second paragraph to article 18.1 of the Project with the following wording:

"When the documents to be published include the identification of the physical persons affected, the identification must be done in accordance with the provisions of the personal data protection regulations and, where applicable, the guidelines established by the data protection authorities."

VI

Article 18.2 of the Project refers to the possibility provided for in article 3.4 of Law 2/2007, of June 5, of the Official Journal of the Generalitat of Catalonia. According to article 3.4 of the Law:

"4. The managing entity of the DOGC must limit access to data of a strictly personal nature, at the request of the competent body, once the period of public exposure determined by the rule that requires its publication has passed ."

Article 18.2 of the Project correctly places the decision to determine whether there is a deadline for public exposure within the responsibilities of the entity issuing the document. This provision is fully consistent with the fact that the issuing entity is responsible for the processing and, therefore, the entity that must determine the conditions under which it must be carried out. In any case, it could be good to include in this section a reference to the fact that this information must be included in the form referred to in article 12.1.b) of the Project.

On the other hand, in this article 18 dedicated to the protection of personal data, it would be good to include a section dedicated to the implementation of measures to avoid the indexing of documents that are published and contain personal data by external search engines.

As highlighted by the STJUE of May 13, 2014 (Google vs. Spain case) the repercussions for the people affected by the publication of certain information via the internet are considerably greater if you take into account the possibility offered by internet search engines to search for information about a specific person:

"... it must be noted, first of all, that, as stated in paragraphs 36 to 38 of this judgment, a treatment of personal data such as the one at issue in the main litigation, carried out by the manager of a search engine, can significantly affect the fundamental rights of respect for private life and the protection of personal data when the search carried out using this search engine is carried out based on the number of a natural person, since said treatment allows any internet user obtains through the list of results a structured view of the information related to this person that can be found on the Internet, which potentially affects a multitude of aspects of his private life, which, without said engine, would not have been interconnected or could only having done it very difficult and which allows him to establish a more or less detailed profile of the person in question.

In addition, the effect of interference with said rights of the interested party is multiplied due to the important role played by the Internet and search engines in modern society, which give the information contained in such a list of results a ubiquitous character (see, in this sense, the judgment in eDate Advertising, paragraphs 459/09 and C-161/10,

For this reason, and taking into account that search engines external to the DOGC may end up relating the information published in the official newspaper to any other information published on the web, even facilitating the creation of profiles, as this Authority already stated in the [Recommendation 1/2008 on the dissemination of information containing personal data via the Internet](#), it is advisable for official newspapers to implement technical measures to avoid indexing by external search engines. The existence of a search engine of the DOGC itself, which limits the information offered to that which appears in the Official Journal, and the specific mechanisms that are implemented for the consultation of the supplement for the publication of notifications (it can be foreseen that those interested take a search system or an alert system by ID number or equivalent) would already offer search possibilities wide enough to achieve the purpose pursued by the publication in the official newspaper, without unnecessarily sacrificing the data pro

In the event that the application of these measures to all published documents may be unnecessary, the Project could foresee that these measures are applied only to those sections of the newspaper that may contain personal data other than that of the author of the act or, if the technology available allows it, applying these measures to those documents in which the issuing entity has identified that there are personal data other than the identification of the author of the act

Finally, it could also be positive to incorporate in this article 18 a reference to a protocol of the DOGC Management Entity on the publication of personal data, in line with the Action Protocol in relation to the publication of personal data that promoted this entity, i

on which the APDCAT issued a report in June 2014 (CNS 33/2014), and which should be adapted to the regulatory changes that have occurred. This protocol should also include the criteria for the publication of advertisements that may affect people who are victims of gender violence that we referred to in the comment on article 8 of the Project.

Conclusions

Having examined the Draft Decree approving the Regulation of the Official Journal of the Generalitat of Catalonia, it is considered adequate to the provisions established in the regulations on personal data protection, as long as the considerations made in this report are taken into account.

Barcelona, September 18, 2020

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