

Report in relation to the Draft Decree on Food Crafts in Catalonia

The Draft Decree on Food Crafts in Catalonia is presented to the Catalan Data Protection Authority, so that the Authority issues its opinion on the matter.

The Draft Decree is structured in 6 chapters, and consists of a preamble, 35 articles, a transitional provision, a repealing provision, a final provision and two annexes.

Having examined 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, the following is reported.

Legal foundations

I

(...)

II

The purpose of the Decree Project is to define the concepts of food craft and food craft business as well as to regulate the accreditation system of food craft for natural persons and food companies, the Master's Diploma in food craft , the Food Craft Award, the Food Craft Register in Catalonia, and the composition, functions and operation of the Food Craft Commission (article 1).

The aims of the project are identified as, among others, Providing correct, truthful, adequate and sufficient information to consumers to recognize accredited food artisan companies (article 3.b) and Recognize food artisans who stand out for their professional merits in the matter (article 3.d),.

In accordance with the content of the draft decree, the implementation and processing of the different accreditation systems that it regulates, as well as the Master's Diploma, the craft award and the creation and management of the Food Crafts Register will entail the processing of a set of personal information, which must comply with the provisions of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (RGPD) and Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD).

There is a lack of references, whether general or more specific, to the regulations on the protection of personal data in the analyzed text. Although the applicability of the right to data protection certainly does not depend on its inclusion in the regulatory text.

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 in more detail below, the perspective from which this report is issued.

III

Article 9 of the draft decree regulates the procedure for granting the food artisan card and provides that the application must contain the "identification and contact details of the food artisan, of the establishment food store where the activity is carried out, and it is also necessary to attach documentation that proves compliance with the requirements established in article 8.1 of this Decree and an explanatory report of the artisanal activity carried out, which may be accompanied by audiovisual support".

Article 12 of the draft decree regulates the food craft badge that "can be applied for by any company that carries out a food craft activity and that meets the requirements established in this Decree". This article also provides for the accreditation to be registered in the Register of Food Crafts of Catalonia.

With regard to the Artesania Alimentària badge, article 16 regulates the information that the application must contain, including:

"(...)

a) The name or corporate name of the food company, its tax identification number (NIF/NIE), its commercial name, if applicable, the corporate address and the details of contact (postal address, email address, telephone, social networks). b) Name and surname, tax identification number (NIF/NIE); postal and electronic address and telephone number of your legal representative. c) The identification of the food artisan in their field who directs the production process. (...)"

Article 21 of the draft decree regulates the Master's diploma in food craft which is "an award given to people who demonstrate certain merits of creativity and knowledge in the field of food craft in one of the trades included in the list established in annex 2 of this Decree, who have worked as artisans for a minimum period of fifteen years, who have a food artisan card and who are registered in the Food Crafts Register of Catalonia".

It must be taken into account that the RGPD extends its scope of protection to personal data understood as all information about an identified or identifiable natural person (Article 4.1 of the RGPD).

The data of legal entities are therefore excluded from this scope of protection, as specified by the RGPD itself, establishing that "the protection granted by this Regulation must be applied to natural persons, regardless of their nationality or your 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)

However, this protection does cover the data of individual entrepreneurs and representatives of legal entities, whose treatment must be carried out in accordance with data protection regulations.

In the processing of these badges, awards or cards, it is foreseen that the OGE receives and reviews the applications submitted electronically and adds to the file "the necessary documentation to assess the application and that the applicant does not has contributed under article 28 of Law 39/2015, on common administrative procedure of public administrations, as it is documentation that is already in the possession of the Administration", (article 9.3

According to the RGPD, the person responsible for the treatment is understood to be "the natural or legal person, public authority, service or other organism that, alone or together with others, determines the purposes and means of the treatment" (Article 4.7 RGPD).

The draft decree attributes to the OGE the performance of certain functions in the processing of the procedure that involve the processing of personal data of applicants for the various recognitions regulated in the draft decree. From the point of view of the data protection regulations, the OGE will be considered responsible for the treatment of this data, to the extent that the legal system attributes this function to it without the bodies responsible for the grant of the card, badge or award may decide to carry out this procedure by other means.

Once this application submission phase has been completed, the Department competent in matters of food craft will be responsible for the processing of the personal data necessary for the processing of the procedure and the subsequent registration in the Register of Food Craft of Catalonia .

These treatments must comply with the provisions of the RGPD.

Regarding the data collection procedure, it is important to respect the principles of transparency (Article 5.1.a) RGPD) and data minimization (Article 5.1.c) RGPD). Thus, it must be taken into account that, in application of the principle of transparency, it will be necessary to provide the applicant with information on the conditions and circumstances relating to the processing of the data, in a concise, transparent, intelligible and easily accessible manner (Article 12 RGPD). In particular, it will be necessary to provide him with all the information referred to in article 13 of the RGPD.

It should be noted that, in order to facilitate the fulfillment of this duty of information, the LOPDGDD (article 11) has provided for the possibility of delivering this information to the affected by layers or levels.

This method consists in presenting "basic" information (summary information) at a first level, so that you can have a general knowledge of the treatment, indicating an electronic address or other means where it can be accessed easily and immediately to the rest of the information, and, at a second level, offer the rest of the additional information (detailed information).

If you opt for this route, it must be taken into account that the said "basic" information in the present case must include the identity of the person responsible for the treatment, the purpose of the treatment and the possibility of exercising the habeas data rights established in articles 15 to 22 of the RGPD. And this taking into account that there will be a different data controller in each of the two phases.

Also, given that it is anticipated that certain data will not be obtained from the applicant, but will be provided by the OGE by consulting the information held by other administrations, it is necessary to include in the basic information also the categories of data subject to treatment and the source from which these personal data come (article 11.3 LOPDGDD)

In this case, it is necessary to inform, also of the consultations that are planned to be carried out to obtain the data not provided, of the possibility of opposing this consultation or compilation of data held by other administrations (art. 28.2 LPAC), as well as of the consequences that would derive from it. For this purpose, it is recommended to include in the corresponding procedure a box that can be marked if you want to object to this query.

With respect to the principle of data minimization (Article 5.1.c) RGPD), it should be borne in mind that the personal data collected must be adequate, relevant and limited to what is

necessary to achieve the purposes that justify its treatment and therefore will have to be limited to the information required by the legal system.

IV

Section 8 of article 22 provides that "Once it has been published in the DOGC, the competent general directorate in matters of food craftsmanship, ex officio, must enter the recognized person with the master's degree in the Register of Food Crafts of Catalonia".

In relation to the publication of the resolution of the procedure with the identification of the person who has been awarded, remember what is provided in the seventh additional provision of the LOPDGDD which establishes criteria at the same time as identifying those interested in the publication of administrative acts, with the details of the name, surname and four random numerical digits of the DNI, foreigner's identity number, passport or equivalent

Provisionally, until the time when the governing bodies and competent public administrations approve provisions for the application of the aforementioned additional provision seven, the data protection authorities have jointly proposed guidance for the provisional application of safeguards to protect the disclosure of the national identity document, alien identity number, passport or equivalent document of the interested parties and, for this purpose, a random selection of a group of four numerical digits was carried out which will be published for the identification of those interested in the publication of administrative acts.

You can find Guidance here <https://www.spdcat.gencat.cat/web/.content/01-autoritat/normativa/documentos/VAR-9-2019-orientation-disposition-additional-7-cat.pdf> published on the Authority's website:

V

Articles 25 to 29 of the draft decree regulate the Register of Food Crafts of Catalonia.

This register was created by Decree 285/2006, of July 4, which implements Law 14/2003, of June 13, on food quality.

Article 26 of the draft decree structures the register in four sections:

"a) First section: food artisan card. b) Second section: Master's degree in food craftsmanship. c) Third section: award for Food Crafts. d) Section four: badge of artisan food company."

Among the data that must be entered in the Register with regard to the food artisan card, the Food Craft Award and the Master's diploma, article 29.1 of the draft decree establishes:

"a) Section of the Registry. b) Registration number, within each section. c) Food craft trade. d) General data of the registrant: first and last name, DNI or NIF, registered address and contact details (e-mail, telephone, website, social networks). e) Current date of recognition.

f) The modifications introduced and the date they were introduced, if applicable. g) Date of resignation. h) Date of revocation, if applicable. i) In the case of the prize, if it is a prize or access and the prize category, if applicable. "

In relation to artisanal companies that have obtained the Food Crafts badge, article 29.2 of the draft decree provides that it is necessary to register:

"a) The name or company name; tax identification number (NIF/NIE); trade name (if applicable); social address; postal and electronic address and other contact details (telephone, website, social networks) of the company. b) The first and last name, tax identification number (NIF/NIE), email address and telephone number of your legal representative. c) The address of the establishment(s) producing food products. d) The identification of the food artisan responsible for the food artisan process of the accredited food artisan company (name and surname and food artisan card number). e) The date of accreditation. f) The modifications introduced and the date on which they were introduced. g) The date of renunciation of accreditation to enjoy membership as an artisan food company, presented by the interested parties. h) The date of revocation of the accreditation to be an artisan food company, if applicable."

A first observation that should be made regarding the system used by the draft decree, refers to the fact that although the register is structured in four sections, the data that must be entered in the register are regulated grouped only in two sections of the article 29: one for artisans who have an artisan card for any of the trades (the same natural person can apply for a food craft card for each of the artisan trades he exercises (article 8.2)), the who have obtained a master's degree or who have been awarded a prize (article 29.1); and a second for craft companies that have obtained the Food Crafts mark (article 29.2).

It would be much clearer and would provide more legal certainty to establish for each of the four sections the information that must be entered in each of them. It could also be chosen to organize the registration in two unique sections, one for people with an artisan card (in which the people who have obtained the Prize or Master's diploma would be noted) and another for companies that they have obtained the badge of food craftsmanship. This structure would also facilitate access to information.

In any case, if it is chosen to maintain the current structure of Article 29, note that this option entails some shortcomings. Thus, for example, article 29.1 refers to what must be entered if the award has been obtained, but there is no reference to whether the master's degree has been obtained; or also for example, in the Food Craft Award section, it does not seem to make sense to enter the current date of recognition or the modifications that have occurred.

With regard to the companies that have obtained the food craft label, after reviewing the requirements for obtaining the food craft label and the content of the awarding resolution, it is missing from the data in enter in the register, the registration number, the food craft activity carried out by the company within the repertoire that regulates article 5 of the draft decree and whether they have obtained the Award.

It would therefore be necessary to modify the structure of this article and, where appropriate, include or exclude from each section the data according to whether or not they are relevant for each section.

The draft decree provides in article 27 that "Access to this data is governed by current regulations on common administrative procedure of public administrations and on transparency, access to public information and good governance."

The wording of this article 27 does not make it clear whether the data contained in the register can be accessed through the request or whether it is information that will be made public directly.

It must be taken into account that the publication of personal data from the Register, like any other processing of personal data (Article 4.1) RGPD), requires sufficient justification (6.1 of the RGPD), and conforms to the rest of the principles established in data protection legislation, in particular, that of data minimization (Article 5.1.c) RGPD), according to which only appropriate, relevant and limited data must be processed to what is necessary in relation to the purposes by which they are treated.

Remember that, in accordance with articles 6.3 of the RGPD and 8 of the LOPDGDD, it must be a norm with the rank of law that determines the basis of the treatment in order to be able to consider that the legal basis of the article 6.1.e) of the RGPD.

In the absence of legal authorization in the sectoral regulations with the rank of law that establishes the publication regime, as would be the case at hand given that Law 14/2003 does not regulate the publicity regime of this register, in the case of public administrations may use the legal basis of article 6.1.e) in accordance with article 19.3 LOPDGDD, for the processing of the contact data of natural persons who represent the legal entity when necessary for the 'exercise of their powers, provided that the processing refers only to the data necessary for their professional localization and that the purpose of the processing is solely to maintain relations with the legal entity in which it provides its services. This qualification is also assumed with regard to the processing of the data of individual entrepreneurs and liberal professionals, as long as it is to refer to them in this condition.

However, in accordance with the principle of minimization (Article 5.1.c) RGPD), it should be specified that only the information entered in the Register that is strictly necessary to achieve the purpose pursued by the same, in accordance with articles 28 and s. of Law 14/2003, and defined in article 25 of the draft decree in the following terms: "know through their registration the different recognitions of food craftsmanship: the food artisans who have the card, the people food artisans who have been awarded the Master's degree in food craft, people awarded with the Food Craft Award, and food craft companies accredited with the Food Craft badge."

Whatever the final structure of the register, it is necessary to analyse, in accordance with the principle of minimisation, which of the registered data can be made public relating to artisans and artisan companies.

Thus, with respect to the data entered in the register of companies that have obtained the food craft badge, the name data (name and surname in the case of natural persons) or company name can be made public; trade name (if applicable); business address (postal and electronic address) and other professional contact data (telephone, website, social networks), but not the fiscal identification number (NIF/NIE) which would be considered excessive data for the purpose pursued. In the same way, the first and last name, tax identification number (NIF/NIE), email address and telephone number of the legal representative, does not seem to be necessary data for the purposes of knowing the registration in the register of the company in which they provide services, nor would the identification of the food artisan responsible for the artisan food process of the artisan company. Instead, other data could be published

such as the section of the register, the trade or food craft activity carried out by the company, and information relating to whether the company has been awarded an award or, in the case of an access, with indication of the same category.

With regard to the publication of the data of people with an artisan card, it would be sufficient to identify the person with their first and last name, the food craft trade or trades they carry out, the master's degrees they have obtained and the prizes or achievements with which it has been awarded, with an indication of the category.

In accordance with what has been explained, it is proposed to modify the wording of article 27 in the following sense:

"27.1 The Register of Food Crafts of Catalonia is public.

27.2 Any person has the right to access the Register, upon request, in the terms established in article 13 of Law 39/2015, of October 1, and in accordance with the provisions of the regulations of transparency and access to current public information.

27.3 The publicity of the data entered in the register covers:

- a) With regard to the persons who have the artisan card registered in the Register, their first and last names, the section of the register, the card they have, the trade or trades of food crafts they develop, the diplomas of master's degree he has obtained and the awards or acces with which he has been awarded, with an indication of the category.
- b) With regard to the companies that have obtained the badge of food craftsmanship registered in the Register, the commercial name (name and surname in the case of natural persons) company address (postal and electronic address) and other professional contact details (telephone, website, social networks), the food craft trade or trades you develop and the awards or acces with which you have been awarded, with an indication of the category

Finally, for a matter of systematicity, it is proposed to modify the order of these articles in such a way that the content of article 27 is located in the regulatory text following the content of the current article 29 which regulates the data to enter in the register.

VI

With regard to the tools that support both the processing of the different procedures provided for in the draft decree, as well as the Register of Food Crafts of Catalonia, it is necessary to remember the need to implement appropriate technical and organizational measures to guarantee a level of security adequate to the risk involved in the processing of personal information envisaged, taking into account the state of the art, the costs of application and the nature, scope, context and purposes of the processing, as well as the risks of variable probability and severity for the rights and freedoms of the natural persons affected (articles 24 and 32 RGPD).

Regarding the adoption of these measures, point out that the RGPD establishes a security model that is based on the need for a prior risk assessment by the person in charge to determine what are the risks that are objectively expected to be generated by the processing and, from there, determine and implement appropriate security measures to deal with it.

Remember, regarding the establishment of organizational measures, that a comprehensive security model also requires the adoption and implementation of training measures for the staff who must process personal data.

Also agreeing that, in the case of public administrations, the application of security measures will be marked by the criteria established in the National Security Scheme, approved by Royal Decree 3/2010, of January 8, which, currently, is being reviewed.

In this regard, the LOPDGDD provides that:

"First additional provision. Security measures in the public sector.

1. The National Security Scheme will include the measures that must be implemented in case of personal data processing, to avoid its loss, alteration or unauthorized access, adapting the criteria for determining the risk in the data processing to the 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 DA1a expressly refers, we find 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.

For all this the following are done,

Conclusions

Having examined the draft decree on food craft in Catalonia, it is considered adequate to the provisions established in the regulations on personal data protection, as long as the considerations made in foundation V of this report are taken into account.

Barcelona November 4, 2020