

Report in relation to the Draft Decree on the electronic transmission procedure to the Catalan Tax Agency of documents authorized by the notaries of Catalonia

The Draft Decree on the procedure for telematic transmission to the Catalan Tax Agency of documents authorized by the notaries of Catalonia is submitted to the Catalan Data Protection Authority, so that the Authority issues its opinion on the matter.

The Draft Decree consists of a preamble, three articles, a repealing provision and two final provisions.

The Project is accompanied by the General Report and the Impact Assessment Report.

Having examined the Project and the documentation that accompanies it, and having seen the report of the Legal Counsel, the following is reported.

Background

Decree 648/2006, of December 27, established the procedure for the electronic transmission of information on the data of tax significance of certain documents authorized to the notaries of Catalonia, in development of the information obligations established in the article 15 of Law 7/2004, of July 16, on fiscal and administrative measures, and the second additional provision of Law 12/2004, of December 27, on financial measures.

During the last few years, a situation that could be improved in the supply of this information has been noted, such as the fact that the copy of the public deeds could be sent to the Catalan Tax Agency together with the summary information statements of the public documents, and not only when specifically required.

For this reason, the Department of the Vice-Presidency and of Economy and Finance considers it necessary to regulate again the conditions and deadlines in which notaries destined for Catalonia must send to the Catalan Tax Agency certain documents authorized in the notaries of Catalonia with significance for the management of taxes on inheritances and donations, and on patrimonial transmissions and documented legal acts.

Legal foundations

I

(...)

II

The purpose of the draft decree being examined is to *"establish the procedure for electronic transmission of documents authorized by notaries in Catalonia to the Catalan Tax Agency" (article 1).*

Article 2 of the Project regulates the general procedure for the electronic transmission of documents authorized by notaries in Catalonia to the Catalan Tax Agency (ATC), in the following terms:

"2.1 Notaries destined for Catalonia must send the following documents to the Catalan Tax Agency:

a) Summary informative declaration of the public deeds referred to in article 15 of Law 7/2004, of July 16, on fiscal and administrative measures or rule that replaces it, which will include the electronic copy of the deed.

A summary information statement must be sent for each of the deeds that include the taxable facts that are established through the order of the person in charge of the department competent in matters of finance, in accordance with what is established by first final disposition.

b) Simple copy in PDF format of the public documents referred to in the previous section, in accordance with the provisions of the second additional provision of Law 12/2004, of December 27, on financial measures or rule that the replace

The copy must be sent complete, including the attached documentation that appears in the public deed.

2.2 The documentation referred to in section 2.1 must be sent electronically to the Catalan Tax Agency with the technical specifications established by order of the person in charge of the competent department in matters of tax in accordance with what is established in the first final provision. In any case, to guarantee the authorship, origin and integrity of the copies and information sent, the sending of information must be carried out through a secure connection between the systems of the Tax Agency of Catalonia and the General Council of Notaries.

2.3 In general, the information referred to in paragraph 1 must be transmitted within ten working days from the date of formalization of the public deed to which it refers.

When it is not possible to comply with the general deadline, and exceptionally, the information may be transmitted as long as the deadline for submitting the tax in question is not exceeded."

Article 3 of the Project regulates the specific procedure for the individual transmission of copies of deeds with prior request, in the following terms:

"When the Tax Agency of Catalonia requires the sending of the simple electronic copy of a certain public deed, the shipment must be made within the maximum period of ten working days counted from the Tax Agency of Catalonia 'required electronically from the notary, with specific indication of the document and in accordance with the rest of the requirements of the notarial regulations, through the secure information systems used between the Catalan Tax Agency and the General Council of Notaries ."

III

From the aspect of the right to data protection, the perspective from which this report is issued, it must be taken into consideration that the transmission of the documentation referred to by the

articles previously transcribed, to the extent that it includes data relating to natural persons, constitutes data processing that must comply with the provisions of Regulation (EU) 2016/679, of the Parliament and of the European Council, of 27 April 2016, General Data Protection Regulation (RGPD) and Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD).

The RGPD establishes that all processing of personal data must be lawful, fair and transparent (Article 5.1.a)).

Article 6.1 of the RGPD regulates the legal bases on which the processing of personal data can be based. Specifically, section c) provides that the treatment will be lawful if *"it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment"*.

Article 6.3 of the RGPD establishes that the basis of the treatment indicated in this article 6.1.c) must be established by the Law of the European Union or by the law of the Member States that applies to the person responsible for the treatment.

The reference to the legitimate basis established in accordance with the internal law of the Member States referred to in this article requires that the rule of development, when dealing with the protection of personal data of a fundamental right, has the status of law (Article 53 CE), as article 8.1 of the LOPDGDD has come to recognize:

"1. The processing of personal data can only be considered based on the fulfillment of a legal obligation required of the person in charge, in the terms provided for in article 6.1.c) of Regulation (EU) 2016/679, when this is provided for by a law of the European Union or a rule with the rank of law, which may determine the general conditions of the treatment and the types of data subject to it as well as the assignments that proceed as a consequence of the fulfillment of the legal obligation. Said rule may also impose special conditions on treatment, such as the adoption of additional security measures or others established in Chapter IV of Regulation (EU) 2016/679."

In the same text of the Decree Project, reference is made, in this sense, to article 15 of Law 7/2004, of July 16, on fiscal and administrative measures, and to the second additional provision of Law 12/2004 , of December 27, of financial measures.

Article 15 of Law 7/2004 provides the following:

"Obligation of electronic transmission of documents authorized by notaries.

In the terms and conditions established by regulation, notaries are obliged to transmit electronically, to the delegations of the General Directorate of Taxes and the liquidating offices, the documents referred to in articles 32.3 of the Law of State 29/1987, of December 18, on inheritance and donation tax, and 52 of the revised text of the Law on property transfer tax and documented legal acts."

Law 29/1987 establishes the obligation to send *"the comprehensive list or index of all documents authorized in the previous quarter that refer to acts or contracts that could lead to increases in assets that constitute the taxable event"* and *"the relationship of the private documents with the content indicated that they have been presented for their knowledge or legalization of signatures"* (second paragraph article 32.3).

The revised Text of the Tax Law on property transfers and documented legal acts, approved by Royal Legislative Decree 1/1993, of September 24, establishes the same obligation of

send "a list or comprehensive index of all the documents authorized by them in the previous quarter, with the exception of acts of last will, recognition of children and others determined by the Regulation" (second paragraph article 52).

For its part, the second additional provision of Law 12/2004 states that:

"Electronic transmission of documents authorized by notaries

*In relation to what is established in article 15 of Law 7/2004, of July 16, on fiscal and administrative measures, and with the purpose of fulfilling the tax obligations of taxpayers and facilitating electronic access to documents in public records, notaries destined for Catalonia **must transmit** electronically, with the collaboration of the General Council of Notaries, **together with the copy of the deeds authorizing, a notarial informative declaration of the basic elements of the aforementioned deeds**, in accordance with the provisions of the notarial legislation.*

***The Department of Economy and Finance must determine** the taxable events referred to in the information declaration and must establish the **procedures, structure and terms in which this information must be transmitted.**"*

The current regulation that specifies the conditions under which this documentation must be sent (Decree 648/2006, of December 27, cited in the background of this report) does not contemplate the joint processing of the declaration summary information corresponding to the public deeds that are authorized and the copy of these deeds to the Tax Administration.

The single article of Decree 648/2006 provides for the sending of the summary information declaration of public deeds and specifically with regard to the simple electronic copy of the deed public establishes that, although it must be available at the same time that the corresponding summary information declaration is sent, it must be sent when the Tax Administration has requested it from the notary.

In the impact assessment report that accompanies the Project, it is pointed out that this way of proceeding hinders the administrative actions of checking and investigating tax obligations, as it has been established, over the years, that it is not agile and it involves an excessive bureaucratization of the shipment which can delay the processing of the verification procedures.

The Draft Decree that is now being examined - with the approval of which Decree 648/2006 will be repealed - modifies this system, while establishing (article 2) that the sending of the electronic copy of the notarial deeds must 'to carry out in a general manner together with the sending of the summary information declaration. Therefore, not only when it is applied for specific (issue referred to in article 3 of the Project).

This provision responds more accurately to the mandate established in the second additional provision of Law 12/2004, which, as has been said, imposes on notaries destined for Catalonia the obligation to send to the Tax Administration **"together with the copy of the authorizing deeds, a notarized informative declaration of the basic elements of the said deeds (...)"**.

Regardless of the specific terms in which the documentation must be sent, to the extent that a rule with the rank of law expressly establishes the obligation to send this documentation to the Tax Administration, the legitimacy for the communication of the data incorporated in the documents referred to in this Project would be given by the concurrence of the legal bases of article 6.1.c) and 6.1.e) of the RGPD.

IV

The Draft Decree that is being examined establishes that the documentation will have to be transmitted electronically through a secure connection between the ATC and the General Council of Notaries systems to guarantee the authorship, origin and integrity of the copies and the information sent (articles 2.2 and 3).

Article 5.1.f) of the RGPD, relating to the principle of integrity and confidentiality, states that:

"Personal data will be treated in such a way as to guarantee security Adequacy of personal data, including protection against treatment no authorized or illegal and against accidental loss, destruction or damage, through application of appropriate technical or organizational measures."

In accordance with this principle, it is necessary to implement appropriate technical and organizational measures for guarantee a level of security appropriate to the risk involved in the processing of the information personnel provided for in the Project, taking into account the state of the art, application costs and the nature, scope, context and purposes of processing, as well as the risks of probability i variable severity for the rights and freedoms of the natural persons affected (articles 24 i 32 GDPR).

Remember that the application of these measures will be marked by the criteria established in the National Security Scheme, approved by Royal Decree 3/2010, of January 8.

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 treatment of personal data, to avoid its loss, alteration or unauthorized access, adapting the risk determination criteria in it data processing as established in article 32 of Regulation (EU) 2016/679.

2. Those responsible 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 promoting a degree of implementation of equivalent measures in companies or foundations linked to them subject to private law.

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

Among the data controllers included in article 77.1 of the LOPDGDD, to which this DA1a expressly refers, we find public law entities linked to or dependent on public administrations, as well as public law corporations when the purposes of the treatment are related to the exercise of public law powers, among others.

Therefore, it will be necessary to apply the security measures established in the National Security Scheme in sending the documentation to which the Project refers.

For all this the following are done,

Conclusions

Having examined the draft decree on the electronic transmission procedure to the Catalan Tax Agency of documents authorized by the notaries of Catalonia, it is considered adequate to the provisions established in the regulations on the protection of personal data.

Barcelona, January 28, 2021

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