

PD 7/2021

Report on the Draft Decree on organic food production

A letter from the Department of Climate Action, Food and Rural Agenda is presented to the Catalan Data Protection Authority, requesting that the Authority issue a report on the Draft Decree on organic food production.

Having analyzed the Project, and taking into account the current applicable regulations, and in accordance with the report of the Legal Counsel, the following is reported.

Background

In Catalonia, Law 2/2014, of 27 January, on fiscal, administrative, financial and public sector measures (Title VII, Chapter II) regulated organic agri-food production in Catalonia with the aim of improving the regime of control and modified the nature and operating regime of the Catalan Ecological Agricultural Production Council.

The aforementioned Law defines the main actors responsible for the organic agri-food production regime and its control and certification, which are, on the one hand, the competent authority, responsible for the controls being carried out in accordance with the obligations established by the regulations applicable and which is the competent department in matters of agri-food production, and, on the other hand, the control authority, which is the Catalan Council for Ecological Agricultural Production, which is given the power to control and certify organic operators .

The draft decree that is analyzed, unfolds and specifies the content of this Law. It regulates, among other aspects, the regime of intervention and control over the production and labeling of organic products, the Register of Organic Operators of Catalonia, the Catalan Council for Organic Agricultural Production, the rights and duties of the operators and the electoral regime of the Catalan Council of Ecological Agricultural Production.

Legal Foundations

I

(...)

II

The purpose of the draft decree that is submitted to report is (article 1):

"a) Establish the necessary provisions to ensure the control of organic food production within the framework of European Union law. b) Regulate the Register of Ecological Operators of Catalonia. c) Establish the structure and operation of the Catalan Council for Organic Agricultural Production (from now on, the Council) as a control authority for organic food production in Catalonia, the rights and duties of its members and the regime of "election of its governing bodies."

Its scope of application is the "operators who, at any stage of production, preparation and distribution, carry out activities related to the products included in the scope of application of the Regulation (EU) in Catalonia" 2018/848 of the Parliament and the Council, of 30 May, or rule that replaces it".

This Project is structured in six chapters:

- Chapter 1 establishes the general provisions of the organic production system and its control and regulates aspects such as the object and scope of application, the use of terms referring to organic production, the competent authority, the 'control authority and administrative protection.
- Chapter 2 is dedicated to the regime of intervention and control over the production and labeling of organic products, and regulates aspects such as the prior notification of the start of activity, the recognition of the beginning of the conversion period with retroactive, exemptions from organic production rules, certification regime, official control, commercial label control, protection of the use of organic production terms and withdrawal of certification.
- Chapter 3 is dedicated to the Register of Organic Operators of Catalonia, which is the administrative register where all organic operators in Catalonia subject to the organic production control regime are registered.
- Chapter 4 refers to the Catalan Council for Ecological Agricultural Production; it mentions its nature and specifies the powers and functions and its members. Likewise, it defines the bodies in which it is structured, among which there is the Governing Board, the entity's highest governing body, and the president, who exercises its representation. It also deals with the composition and functions of the Parts Commission, the Control Area and the Certification Committee, and establishes the budget regime and the financing of the Council, which is mainly based on the establishment of a system of quotas with the aim of guaranteeing its economic support.
- Chapter 5 includes the rights and duties of operators.
- Chapter 6 establishes the electoral regime of the Catalan Production Council Agrària Ecològica on the basis of which the elected positions of the Governing Board are chosen.

This report is issued exclusively with regard to the assessment of the incidence that this project may have from the point of view of the protection of personal data, understood as "all information about an identified or identifiable natural person ("the interested party")". For these purposes, article 4.1 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD)) adds that a natural person will be considered identifiable

any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of physical, physiological, genetic identity, psychic, economic, cultural or social of said person".

In this case, the content of the project entails the treatment of both operators who have the status of a natural person, as well as people who can act on behalf of an operator. Personal data protection regulations will apply to this data.

Any aspect that does not affect personal data, such as the processing of data from operators who do not have the status of natural persons, is outside the scope of this report.

III

Chapter 3 is dedicated to the Register of Ecological Operators of Catalonia. Article 14 provides:

"The Register of Organic Operators of Catalonia (henceforth, the Register) is an administrative register attached to the competent department for organic food production which is managed by the Council and in which they register all operators of organic agri-food production in Catalonia referred to in article 6.1."

Article 17 establishes the data to be entered in the Register, which includes, among others, general data of the holder (surname and first name or company name, tax identification number or code (NIF), address, postal code, municipality, telephone and electronic address and, if applicable, of the headquarters/legal representative), and other data linked to the activity and the group of operators in question.

From the point of view of the protection of personal data, the processing of this data must be lawful, loyal and transparent in relation to the interested party (article 5.1.a) RGPD). In this sense, article 6.1 of the RGPD provides that in order to carry out a treatment there must be a legal basis that legitimizes this treatment, either the consent of the person affected, or any of the other circumstances, such as now that "the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment" (letter e).

As can be seen from article 6.3 of the RGPD and expressly included in article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereafter LOPDGDD), the treatment of data can only be considered based on these legal bases of article 6.1.e) of the RGPD when this is established by a standard with the rank of law.

The Register of Ecological Operators of Catalonia is managed by the Council Catalan for Ecological Agricultural Production (hereafter CCPAE) In this sense, the Law 2/2014, of January 27, on fiscal, administrative, financial and public sector measures, in Title VII, Chapter II, subsection two, specifically, article 183, provides the following:

"The Catalan Council for Ecological Agricultural Production is a public law corporation with its own legal personality, economic autonomy and full capacity to act in the exercise of its powers. It is subject, in general, to private law, except for actions that involve the exercise of public functions or powers, in which it remains subject to administrative law."

Article 184 foresees among its powers, managing the records, control and certification of organic agri-food production in accordance with the regulations on production and labeling of organic agri-food products, proposing the drafting and modifications of the internal regime regulation, draw up the statistics of production, preparation, marketing of the certified products and all the other information that is required, and present them to the department competent in agri-food matters so that they can take note of them.

Specifically, the management of the register must be considered, as recognized in article 23.b) of the Project, as a public function. Taking this into account, the legal basis that would enable the CCPAE for the registration of operators' data in the register derives from the provisions contained in Law 20/2014 of 27 October, which regulates the legal framework of the CCPAE, in relation to article 6.1.e) RGPD.

It should also be remembered that the processing of this data must comply, among others, with the principles of purpose limitation (Article 5.1.b) RGPD) and data minimization (Article 5.1.c) RGPD).

According to these principles, personal data must be collected for specific, explicit and legitimate purposes, their subsequent treatment not being possible in a way incompatible with these purposes (limitation of the purpose), and must be adequate, relevant and limited to what is necessary to achieve these until they justify their treatment (data minimization).

In this case, the treatment of this data provided for in the Project can be considered adequate to the data protection regulations to the extent that it is limited to the personal data detailed in article 17 and that its use is limited to compliance with the obligation to register all persons operating organic agri-food production in Catalonia.

But beyond registration, the project also regulates the publication of certain information contained therein.

In this sense, it should be borne in mind that article 34.6 of Regulation (EU) 2018/848 of the Parliament and of the Council, of 30 May 2018 on organic production and labeling of organic products and which repeals Regulation (EC) 834/2007 of the Council (applicable from January 1, 2021), provides for the publication of completed information. Thus, it provides the following:

"Member States will keep up-to-date lists with the numbers and addresses of operators and groups of operators that have notified their activities in accordance with section 1 and will make public in an appropriate manner, including through links to a single website, a complete list of these data, together with the information relating to the certificates provided to said operators and groups of operators pursuant to article 35, section 1. At the time of compliance, the Member States will observe the requirements regarding the protection of personal data in accordance with Regulation (EU) n. or 2016/679 of the European Parliament and of the Council (1)."

Therefore, article 34.6 of Regulation (EU) 2018/848, in relation to article 6.1.e) GDPR would enable this post.

In this case, with regard to the publicity of the data entered in the Register, article 20 of the Project provides that "The name or company name of the operators shall be considered public data entered in the Register, the domicile, the activities registered in the Register, the products and the period of validity of the certificate, and, in the case of agricultural producers, the crops, and, in the case of producers livestock farmers, also animal species."

At the outset, it is positively valued that article 20 specifies the personal data contained in the register that will be public, and limits it to the personal data of name and address, excluding the rest of the personal data contained in the documents submitted by operators and producers such as telephone or email address. Now, and in line with what is established in the aforementioned article 34.6, it seems that the publication must also include information on the certificates they have. In the event that this is the case, it would be good if the Decree expressly provided for it.

On the other hand, with regard to the consultation system in the Registry, and taking into account the principle of minimization, it would seem more appropriate to the personal data protection regulations, in accordance with the mandate of the same article 34.6, to make the consultation possible individualized whether a certain operator is on the list, without the need to publish the full list. To the extent that this would also allow the purpose pursued with the publication to be achieved (in principle, to check whether a certain operator is registered or not and which certificate it has), this system would have to be implemented (art. 5.1.c) RGPD).

IV

Article 52 of the Project regulates the electoral roll, in the following terms:

"52.1 In order to determine the number and identity of the electors with the right to vote, the Council will draw up the electoral roll, in accordance with the following data from the operators: a) Name and surname or company name, and legal representative, if applicable. b) Domicile. d) Section of the census. In the case of carrying out more than one activity, the operator will only appear in the section of the census corresponding to his main activity.

52.2 For the purposes provided for in the previous section, the census is divided into the following sections: a) Section of producer operators where the operators whose main activity is the primary production. b) Section of processing operators where the operators whose main activity is preparation are listed. d) Section of operators/distributors/s which lists the operators whose main activity is distribution and other activities subject to the control system 52.3 Within eight days after the date of call, the provisional census must be publicly displayed at the Council's headquarters, on the electronic board of the Department competent in matters of agriculture and livestock and at the Council's electronic headquarters, for a period of fifteen days.

52.4 Complaints in relation to the census can be submitted to the Council during the public exhibition period, which must be resolved by the Council itself. The maximum term to resolve is fifteen calendar days from the day of the end of the public exhibition of the census.

52.5 Within two days after the resolutions on the claims have been issued, the Electoral Board must publicize the definitive census in the same places where the provisional census was published."

With regard to the personal data listed in the census, article 53 of Project has:

"1 The personal data listed in the census can only be used by the entities referred to in this Decree and only for the elections. The publication of personal data is limited to the established places and in the form and during the time necessary for voters to be able to check them and, if necessary, rectify them.

2 A computerized copy of the census must be provided to the candidates. This census can only be used for the purpose of electoral propaganda for the candidates and no other use can be made."

In accordance with article 183.7 of Law 2/20147 of January 27, on fiscal, administrative, financial and public sector measures.

"The constitution, structure and operation of the Catalan Production Council Ecological Agriculture must be based on the following principles: a) Democratic representation. b) Representativeness of the economic interests of the various sectors that make it up. c) Autonomy in the management and organization of the electoral processes for the election of its governing bodies."

According to what has been explained, the election of the CCPAE, as a public law corporation entrusted with certain public functions, must respect the principle of democratic representation. And this must be achieved through an election system to choose the positions of the governing body of the Council, which entails the need for the people who want to run for it to be able to submit their candidacies and proposals to the members of the CCPAE.

The access to data of the operators (voters) during the electoral processes, would find its justification in the guarantee of the faculties that the regulations applicable to the process in question recognize to the candidates during the electoral process, among them to carry out the electoral campaign, including the sending of electoral propaganda. Therefore, the possibility of candidates obtaining a copy of the electoral roll for electoral purposes is justified.

In this case, in accordance with the principle of minimization of personal data (art. 5.1.c) RGPD) it is necessary to remember that the personal information that must be given in the nominations includes only the name and surname of the voter, the domicile, meaning by domicile the postal address, and the section where it is registered, but not other data available to the Council (for example, electronic address, ID), the disclosure of which could have a greater impact on the privacy of the affected persons.

On the other hand, the concreteness of the purpose set out in article 53.2 of the Project is positively assessed to make candidates agree that said information can only be used for the specific purpose for which it has been given, this is its use

during the electoral process "for the purpose of electoral propaganda for the candidates and no other use can be made." (article 5.1.b) RGD, relating to the principle of purpose limitation).

However, aside from what has just been explained, it is recommended to assess other ways to provide this information that are less intrusive, such as, for example, that the Council itself provides voters with information about the candidates. This, apart from implying lower costs, from the point of view of the right data protection reduces the risks arising from it, especially if, as recommended above, a system of consultation of the list that does not involve the mass obtaining of the data of all the operators, but only of those in respect of which a specific query is made.

v

Throughout the text of the Draft Decree, reference is made to the electronic processing of the procedure.

Thus, for example, article 6.2 of the Project provides that "the notification of the start of activity must be submitted electronically to the Council's electronic headquarters." Article 8.2 provides that "the operator must apply for authorization electronically at the Generalitat's electronic headquarters, which can be accessed from the website of the competent department in agriculture".

At this point, from the data protection aspect, the Department must take into account the provisions of article 15 of Law 29/2010, which establishes a series of criteria that must be taken into account in when incorporating electronic media into the performance of the public sector, especially, "the impact of the incorporation of electronic media on the security of documentation and the information and personal data they contain" (section d).

Article 5.1.f) of the RGD, relating to the principle of integrity and confidentiality, provides the following:

"Personal data will be treated in such a way as to guarantee adequate security of personal data, including protection against unauthorized or illegal processing and against its loss, destruction or accidental damage, through the application of appropriate technical and organizational measures. "

In accordance with this principle, appropriate technical and organizational measures must be implemented to guarantee a level of security appropriate to the risk involved in the processing of personal information provided for in the Project, taking into account the state of the art, the costs of application and the nature, scope, context and purposes of the treatment, as well as the risks of variable probability and severity for the rights and freedoms of the natural persons affected (Articles 24 and 32 RGD).

Regarding the adoption of these measures, point out that the RGD 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 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 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."

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 the treatment of the documentation referred to in the Project.

conclusion

Having examined the draft decree on organic agri-food production, it could be considered adequate to the provisions established in the regulations on the protection of personal data, without prejudice to the considerations made in this report.

Barcelona, July 23, 2021