

PD 15/2021

Report in relation to the Draft Decree on the official recognition of Catalan communities abroad

Background

A letter from the Department of External Action and Open Government is presented to the Catalan Data Protection Authority, requesting a report from this Authority, in relation to the Draft Decree on the official recognition of Catalan communities in the outdoor.

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

After examining the Project, which is accompanied by the General Report and the Impact Assessment Report, taking into account the current applicable regulations, and in accordance with the report of the Legal Counsel, the following report.

Legal foundations

I

(...)

II

The purpose of the Decree Project is "(...) the development of Law 8/2017, of June 15, regarding the procedure and requirements for the official recognition of the status of a Catalan community abroad, of federation of Catalan communities abroad and virtual Catalan community abroad and its revocation, as well as the functions and organization of the Register of Catalan communities abroad." (art. 1.1).

Law 8/2017, of June 15, of the Catalan community abroad, which was not submitted to a report by this Authority, aims to regulate, in accordance with current regulations, the framework of relations of the Generalitat, its institutions and the society of Catalonia with Catalans residing abroad, and with Catalans and Catalan communities established outside the territory of Catalonia (art. 1).

The aforementioned regulations are related to the exercise of the powers that, in accordance with article 13 of the Statute of Autonomy, the Generalitat of Catalonia has in relation to the Catalan communities abroad.

From the perspective of the right to the protection of personal data, it is necessary to take into account Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to processing of personal data (RGPD). It is also necessary to take into account the provisions of Organic Law 3/2018, of December 5, on Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD).

It should be remembered that the RGPD only extends its scope of protection to the data of identified or identifiable natural persons (Article 4.1 of the RGPD), so the data of legal entities are excluded from this scope, in this case, non-profit associative entities that are set up as Catalan communities abroad (art. 13 Law 8/2017).

On the other hand, this regulation does apply to the processing of the personal data of the natural persons associated or representatives of these entities, as provided for in the Draft Decree.

Taking into account this regulatory framework, and that article 6.1.e) of the RGPD enables the processing of data necessary to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the data controller, the processing of the personal data necessary to process the official recognition of Catalan communities abroad, as well as of federations or virtual communities, could find qualification on this legal basis.

However, it should be borne in mind that the authorization to collect personal data related to external communities by the competent administration, and its incorporation, if applicable, in the Register, does not necessarily entail authorization to give publicity and dissemination of this data that will be dealt with in the Registry, a matter to which we will refer later.

III

The Registry of Catalan communities abroad

According to article 19.1 of Law 8/2017, "The Register of Catalan Communities Abroad is configured as an administrative database in which Catalan communities abroad, their federations and the virtual Catalan communities recognized in accordance with this law. All the circumstances related to the aforementioned entities can also be registered there, in accordance with what is determined by decree."

The Project that is reported determines which requirements must be met by Catalan communities abroad, federations, and virtual communities, in order to obtain official recognition of the status of Catalan community abroad (arts. 3, 4 and 5, of the Draft Decree, respectively).

The Project also establishes the necessary documentation - and therefore the personal data - that the communities must provide in order to obtain official recognition as Catalan communities abroad and as federations (art. 7), and also as virtual Catalan communities abroad (art. 8).

According to the same article 19, paragraph 3, this Register is attached to the competent department in matters of foreign action.

It is responsible for data processing: "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; if the Law of the Union or of the Member States determines the purposes and means of the treatment, the person responsible for the treatment or the specific criteria for his appointment may be established by the Law of the Union or of the Member States;" (art. 4.7 RGPD).

From the perspective of data protection, we start from the basis that the processing of personal data necessary to set up the Register of Catalan Communities Abroad must have a person in charge, who consequently assumes a series of responsibilities and obligations regarding of the treatment carried out, in accordance with the data protection regulations (RGPD and LOPDGDD). As can be seen from the regulations and the information available, the person responsible for the Registry (art. 4.7 RGPD) would be the Department of External Action and Open Government, which determines the purpose of data processing in said Registry, d in accordance with what the Law establishes in relation to the official recognition of the status of Catalan community abroad and who will determine the means of treatment.

IV

Article 7.2.a) of the Draft Decree

Article 7 of the Project regulates the necessary documentation for the recognition of Catalan communities abroad and federations. According to section 2.a) of this article, Catalan communities abroad must present a "Certificate of the number of members associated with the entity, indicating the total number of men, women, or of non-binary people, their grouping by age, their grouping by nationality, and their distribution among those who have the status of paying member or exempt member."

According to the principle of minimization, the processed data must be adequate, relevant and limited to what is necessary in relation to the purposes of the treatment (art. 5.1.c) RGPD).

Taking into account the objectives that these communities must fulfill (art. 14.g) Law 8/2017), it does not seem contrary to the principle of minimization, that the communities must provide anonymized information (without identifying the affected people) of the number of associates, grouping information by nationality or age, among others, as provided for in article 7.2.a) of the Project.

However, section 5 of the Impact Assessment Report provides for collecting: "(...). (...) certificate of the associated members of the entity where the gender is indicated, in addition to other basic data such as name, date of birth, nationality and the status of paid or exempt member. In addition, this last information must also be presented annually by the entities through a certificate of the updated number of members."

This provision of the Report contradicts the anonymized or dissociated treatment of the data of the associated persons (art. 7.2.a) of the Project). For this reason, it would be necessary to rectify the Report in the sense contained in article 7.2.a) of the Project.

V

Article 17.2

Article 17 of the Project regulates the content of the Register and the "enrollable" data.

Section 1 of article 17 provides for the information that must be included in the file of each recognized entity, and refers to the provisions of articles 7 and 8 of the Project.

According to article 17.2 of the Project: "2. The automated processing of the Catalan communities abroad, at least, the following data:

- registration number
- name of the entity
- type of entity year of
- creation and recognition characteristics
- of the headquarters, if applicable. postal,
- telephone and electronic contact details. composition of the
- board of directors and percentage of presence of women and young people number of
- associated members social networks of the entity"
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At the outset, the reference, in article 17.2, to the data that "at least" would be entered in the Register (providing, therefore, the possibility of incorporating others that are not the Project does not specify), does not help to transmit in a clear and transparent manner what is the information relating to the Catalan communities themselves abroad and, where appropriate, that relating to natural persons related to them, which is planned to be processed. For the purpose of correctly complying with the principle of transparency (art. 5.1.a) RGPD), it would be advisable to avoid using the expression "at least" as much as possible in both article 17.2 and in article 17, section 1, of the Project.

In addition, with regard to article 17.2, the phrase: "The automated treatment of Catalan communities abroad, at least, the following data", is also confusing.

The GDPR does not differentiate between automated and non-automated data processing, as long as the data is intended to be included in a file, so it does not seem necessary to specify that the processing is "automated".

On the other hand, it seems that the word "comprehens" is missing in the statement of this section. Accordingly, the wording of this section could be as follows:

"2. The Register of Catalan communities abroad includes the following data:

(...)"

VI

Article 18

Article 18 of the Project establishes the following:

"1. Publicity of the Registry data must be done through the Transparency Portal of the Generalitat de Catalunya.

2. With regard to personal data, the provisions contained in Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights, apply."

Despite the reference to Organic Law 3/2018, this article does not establish the applicable advertising regime. It establishes the means by which publicity must be given to the register, and establishes that Organic Law 3/2018 will apply, but does not specify which information from the register must be the subject of dissemination or publicity (art. 18 Project).

At the outset, note that if a reference to the data protection regulations is to be included in this article, the reference should not be made to the Organic Law

3/2018 but, in any case, to Regulation 2016/679, general data protection (RGPD) and Organic Law 3/2018. In any case, it would seem preferable to specify already in the Decree itself the data that must be the subject of publicity (as proposed below), instead of making a reference to the data protection regulations that would only introduce an element of legal uncertainty.

On the other hand, the current wording of the Project leads to the interpretation that any personal data collected by the Department for the purposes of managing the official recognition of the communities, could be included in the Register (given that article 17.2 of the Project establishes only the data that collect "at least"), and could be subject to further dissemination.

It is worth saying that article 19 of Law 8/2017 also does not contain any specifics in this regard.

It should be borne in mind that the authorization to collect and process certain data of the entities and, where appropriate, of the related persons (identity of the president, people representing the communities, members of the board), by the Competent administration based on article 6.1.e) of the RGPD, which must form part of the file of each entity (art. 17.1 of the Project), does not mean that these same data must necessarily be subject to back diffusion

In other words, in the absence of legal provision in Law 8/2017 on the regime of publicity of the data entered in the register, the management of the recognition of communities by the Administration does not make it necessary to disseminate or give publicity, subsequently, to personal data of natural persons related to them, such as the identity of the members of the board, and even less, of the contact details of these persons.

It also does not seem that article 19.3 of the LOPDGDD, which provides for the treatment of contact data of natural persons who provide services in a legal entity, is applicable in this case, since the dissemination of this data, which would be data of bodies that are not part of the administration that would disseminate it but of the foreign community, would not be necessary for the exercise of the powers of the competent administration, related to the official recognition of communities abroad, in this case.

This article 19 LOPDGDD, in its section 1, would enable the entities themselves (the Catalan communities abroad) to disseminate, where appropriate, the identity of the people who make up the board and their data of contact, through the channels they consider appropriate, to the effect that third parties can do the professional localization in order to establish some type of relationship with the entity in which they provide services (the community). But this is not the case provided for in the pr

Accordingly, there does not appear to be sufficient legal basis for the Registry to disclose the identity or contact details of community board members, or other natural persons connected to the communities, unless the consent of those affected is available (art. 6.1.a) RGPD).

For all this, the following wording is proposed for articles 17.2 and 18:

Article 17.2:

"2. The Register of Catalan communities abroad includes the following data:

- a) registration number
- b) name of the entity
- c) type of entity d)
- year of creation and recognition e)
- characteristics of the headquarters, if applicable. f) postal, telephone and electronic contact details. g) composition of the board of directors h)
- percentage of presence of women and young people on the board of directors i) number of associate members j) social networks of the entity"

Article 18:

"The Registry data referred to in article 17.2 of this Decree, with the exception of those in letter g), must be published through the Transparency Portal of the Generalitat de Catalunya."

VII

- Article 5.e) and article 8.1.c) of the Project

Title II of the Project regulates the requirements for the official recognition of the status of a Catalan community abroad (art. 3), of a federation of Catalan communities abroad (art. 4), and of a virtual Catalan community in the outside (art. 5).

In the latter case, article 5 requires, in order to acquire the status of a virtual Catalan community abroad, the fulfillment of different requirements, among others:

"e) Respect the personal data protection regulations in force in the state where the server is located."

In connection with this provision, article 8.1.c) of the Project establishes the following requirement, in relation to the necessary documentation for the recognition of virtual Catalan communities abroad:

"c) It is necessary for the entity to certify in writing that the operation of the website or virtual platform of the Catalan community that wants to be the object of recognition complies with everything prescribed by the personal data protection regulations applicable to the state where the server is located or the platform is located."

These forecasts, which seem to want to determine that the applicable data protection regulations will be the one applicable in the state where the server or platform is located, can be problematic from the point of view of the RGPD.

With regard to Catalan communities located in countries of the European Union, it should be borne in mind that these forecasts would not be adjusted to the RGPD (art. 3 RGPD, in relation to the territorial scope of application).

In accordance with Article 3.1 RGPD, the RGPD will be applicable in any case as long as the treatment is carried out in the context of the activities of the person in charge or the person in charge of the treatment located in the Union. And this regardless of whether the servers or the platform are located in a state outside the European Union.

In this case, that is to say, if the servers or the platform are outside the European Union, it may be the case that the regulations of the state where they are located may also apply, but this cannot exclude the applicability of the RGPD.

With regard to virtual communities located outside (their managers) of the scope of the European Union, the RGPD will not apply, so it will be necessary to be, in relation to the processing of personal data for which they are responsible, to the regulations that are applicable in each case.

It does not seem that in this case a Catalan rule can determine what the applicable regulation will be, but it will be necessary to be what establishes the applicable regulation in the state in question. In any case, it does not seem that a Catalan rule can lead to the conclusion that the applicable regulations will be those of a third state (where the server is located) without taking into account what is established by the regulations of the state where the server

In fact, it may be the case that this regulation is even more guaranteeing in terms of the protection of the personal data of the persons affected, than the regulation that may be applicable in the state where it is located a server This, unless the internal regulations of the responsible state provide that the regulations of the state where the server is located must be taken into account, or provide that it fulfills a certain obligation to inform about the location of said server or platform

For all that has been explained, the following alternative wording is proposed for article 5, section e), and for article 8.1, section c), of the Draft Decree:

- Article 5.e):

"e) Respect the applicable personal data protection regulations in accordance with the legislation of the state where the foreign community responsible for the treatment is located."

- Article 8.1.c):

"c) It is necessary for the entity to certify in writing that the operation of the website or virtual platform of the Catalan community that wants to be the object of recognition complies with everything prescribed by the applicable personal data protection regulations in accordance with the legislation of the state where the external community responsible for the

Finally, and given that the aforementioned provisions (art. 5.e) and 8.1.c) Project) refer only to virtual Catalan communities, it is not superfluous to remember that, in any case, it would also be a requirement for those responsible for Catalan communities abroad as in the federations, in compliance with what is prescribed by the personal data protection regulations that are applicable in accordance with the legislation of the state where this data controller is located.

For this reason, -although it is not strictly necessary for the Project to mention the applicability of data protection regulations-, a provision similar to that proposed for the two articles mentioned and referring to virtual communities could be included, also in the articles that provide for the requirements required of Catalan communities abroad and federations (art. 7.1 of the Project) or a general forecast that included all the assumptions.

For all this the following are done,

Conclusions

Having examined the draft decree on the official recognition of Catalan communities abroad and their registration, it is considered adequate to the provisions established in the regulations on the protection of personal data, as long as the considerations made in this report are taken into account.

Barcelona, November 17, 2021

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