

Opinion in relation to the query made by a city council on the communication of a certificate of collective historical registration to the body competent to manage the minimum vital income requested by a citizen

A letter from a city council is presented to the Catalan Data Protection Authority in which it is requested that the Authority issue an opinion on the possibility of delivering to the body competent to manage the minimum vital income a certificate of collective historical registration referred to a specific person.

Attached to the query is a copy of the request for this information addressed to the City Council, the content of which is as follows:

"In order to manage the application for Minimum Vital Income, we ask you, please, for the certificate of cohabitation/collective historical registration, where it is expressly stated, all the people registered in the address and that no one else lives there person in the same, as well as the seniority date together with a ratio of HIGHS and LOWS of the people registered in it since **01/01/2020**.

In addition, we request to see the inhabitants who do not give their registration data since it is necessary to be able to solve the Minimum Vital Income file.

BENEFICIARY: (...)
IDENTIFIER: (...)"

Having analyzed the query and the documentation that accompanies it, in view of the applicable regulations in force, and in accordance with the report of the Legal Adviser, I issue the following opinion.

I

(...)

II

The Municipal Register is an administrative register regulated by Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL).

Thus, article 16.1 of this law defines the Municipal Register in the following terms:

"1. The municipal register is the administrative register containing the residents of a municipality. Your data constitutes proof of residence in the municipality and of habitual residence in the same. The certifications that are issued of said data will have the character of a public and binding document for all administrative purposes. (...)"

Article 40.1 of the Consolidated Text of the Municipal and Local Government Law of Catalonia (TRLMRLC), approved by Legislative Decree 2/2003 of April 28, states the following in the same sense:

"40.1 The municipal register is the administrative register where residents of a municipality are recorded. The data contained in the register constitute proof of residence in the municipality and usual address. The certifications issued by the town councils on this data have the character of a public document and, consequently, enjoy the presumption of veracity and prove the data recorded in them, for all administrative purposes.(...)"

The LRBRL, and in the same sense the TRLMRLC, establishes the obligation of all residents to register in the Register of the municipality where they have established their residence with a triple purpose: to determine the population of a municipality, to be required to acquire the resident status and serve to prove residence and usual address (articles 15 and 16 LRBRL).

Likewise, it establishes that the registration in the Municipal Register will contain as mandatory the following data: first and last name, sex, usual address, nationality, date and place of birth, number of the identity document (or, for foreigners, the residence card or number of the document certifying their identity), certificate or school or academic degree, and, finally, those data that may be necessary for the preparation of the electoral censuses, as long as fundamental rights are respected (article 16.2 LRBRL).

Article 17.1 of the LRBRL provides that "the formation, maintenance, review and custody of the Municipal Register corresponds to the City Council, in accordance with what is established by the legislation of the State. (...). "

In relation to the issuance of registration certificates, article 61 of the Regulation of Population and Demarcation of Local Entities (RPDTEL), approved by Royal Decree 1690/1986, of July 11, establishes the following:

"The certifications referred to in article 53.1 of the present Regulation will be issued by the Secretary of the City Council or official to whom he delegates, in accordance with the provisions of articles 204 and 205 of the Regulation of Organization, Operation and Legal Regime of Local Entities, approved by Royal Decree 2568/1986, of November 28. (...)"

Therefore, the Town Councils are in charge of managing the Municipal Register and issuing or issue the corresponding certificates for the purposes of accrediting the residence or habitual address of people registered in a home.

III

Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), defines data processing as "any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction" (article 4.2).

The RGPD establishes that all processing of personal data, as in this case would be the communication of data from the Municipal Register of Inhabitants to the INSS through the issuance of the registration certificate requested by this body, must be lawful, loyal and transparent (article 5.1.a)).

In order for the treatment to be lawful, the data must be treated "with the consent of the interested party or on some other legitimate basis established in accordance with the Law, either in the present Regulation or in virtue of another Law of the Union or of the States members referred to in this Regulation, including the need to fulfill the legal obligation applicable to the person responsible for the treatment or the need to execute a contract to which the interested party is a party or in order to take measures at the request of the interested party prior to the conclusion of a contract" (consideration 40 RGPD).

Article 6.1 of the RGPD regulates the legal bases on which the processing of personal data can be based in the following terms:

"1. The treatment will only be lawful if at least one of the following conditions is met:

a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes; b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures; c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment; d) the treatment is necessary to protect the vital interests of the interested party or another natural person; e) 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; f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child."

It must be taken into account that, as is apparent 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 the guarantee of digital rights (LOPDGDD), the processing of data can only be considered based on the legal bases of article 6.1.c) i) of the RGPD when this is established by a rule with the rank of law.

IV

Article 16.3 of the LRBRL generally regulates access to data from the Municipal Population Register by other public administrations in the following terms:

"3. The Municipal Register data will be transferred to other public administrations that request it without prior consent of the affected person only when they are necessary for the exercise of their respective powers, and exclusively for matters in which the residence or the domicile are relevant data. They can also be used to prepare official statistics subject to statistical secrecy, in the terms provided for

in Law 12/1989, of May 9, of the Public Statistics Function and in the statistics laws of the autonomous communities with competence in the matter."

In similar terms, article 40.3 of the TRLMRLC provides that "without prejudice to the provisions of section 2 and without requiring the consent of the person concerned, the data of the register may be communicated to other public administrations that request it, when are necessary to exercise the respective powers, and exclusively for the matters in which it is relevant to know the residence or domicile."

These articles expressly enable the communication of personal data from the Register to other public administrations provided that the purpose of this is to accredit the residence or usual address of the registered persons (a purpose expressly recognized by the same law) and that the information to be transmitted is necessary for the exercise of the functions entrusted to the requesting administration.

With regard to which specific personal data from the Register may be the subject of communication, the principle of data minimization (Article 5.1.c) RGPD must be adhered to, in such a way that the communication covers exclusively appropriate, relevant and limited to what is necessary in relation to the purpose for which they are communicated.

In the case presented, a collective historical registration certificate is requested from the City Council, with respect to a specific citizen, which expressly states all the people registered in the address and that no other person lives in the same, as well as the seniority date together with a list of the additions and deletions of the people registered in it since 01/01/2020.

The purpose of this request, as stated in the request for information attached to the consultation, is to be able to manage the request for the minimum living income submitted by this citizen.

Therefore, the provisions of article 16.3 of the LRBRL can in principle enable the communication of data from the register to other public administrations for the exercise of their powers when the data relating to the domicile is a relevant data.

However, in the case at hand, for the purposes of the communication of data from the Pretend Register, it will be necessary to adhere to what is established in Law 19/2021, of December 20, which establishes the income vital minimum, which establishes a specific data communication regime of the Register to the competent body to the extent that they are necessary for the exercise of the functions attributed to it in relation to the management of this benefit. Therefore, it will be necessary to be in this regime, which is set out below.

v

Law 19/2021, previously cited, aims to create and regulate the minimum vital income as a benefit aimed at preventing the risk of poverty and social exclusion of people living alone or integrated into a cohabitation unit, when they are in a vulnerable situation due to a lack of sufficient resources to meet their basic needs (Article 1).

In accordance with article 4 of Law 19/2021, people in vulnerable situations who live alone or who are part of a cohabitation unit and who meet the requirements established in Article 10 of the same Law.

Specifically, the aforementioned article 10 provides the following:

"1. **All beneficiary persons**, whether or not they are part of a cohabitation unit, must comply with the following requirements:

a) Have **legal and effective residence in Spain** and have had it continuously and uninterrupted for at least the year immediately preceding the date of submission of the application. This term will not be required with respect to:

- 1.º The minors incorporated into the cohabitation unit by birth, adoption, family regrouping of sons and daughters, keep for purposes of adoption or permanent family fostering.
2. People who are victims of human trafficking and sexual exploitation.
- 3.º Women victims of gender-based violence.

For the purpose of maintaining the right to this provision, it will be understood that a person has his habitual residence in Spain even when he has had stays abroad, as long as these do not exceed ninety calendar days during each calendar year or when the absence of the Spanish territory is motivated by duly justified causes of illness.

b) Being in a situation of economic vulnerability due to lack of income, income or sufficient assets, in the terms established in article 11.

2. The beneficiary persons referred to in article 4.1.b) who are under 30 years of age at the time of the application for the minimum vital income, must prove that they have lived independently in Spain, for at least the two years immediately before the indicated date. This requirement will not be required of people between 18 and 22 years old who come from residential centers for the protection of minors in the different Autonomous Communities.

For the purposes of the previous paragraph, it will be understood that a person has lived independently as long as he proves that his domicile has been different from that of his parents, guardians or foster parents during the two years immediately preceding the request, and during that period he would have remained for at least twelve months, continuous or not, in a situation of discharge in any of the regimes that make up the Social Security system, including that of Class Passives of the State, or in a social security mutuality alternative to the Special Security Regime Self-Employed or Self-Employed Social Security.

The beneficiary persons referred to in article 4.1.b), who are over 30 years old on the date of the request, must prove that, during the year immediately preceding that date, their domicile in Spain has been different from that of their parents, guardians or foster parents.

The requirements provided for in the previous paragraphs will not be required when the cessation of cohabitation with the parents, guardians or caregivers had been due to their death. Nor will it be required of people who, because of being victims of gender-based violence, have left their habitual residence, of homeless people, of those who have initiated separation or divorce proceedings, of people who are victims of human trafficking and of sexual exploitation or those who are in other circumstances that can be determined by regulation.

3. When the beneficiary persons are part of a cohabitation unit, it will be required that the same is constituted, in accordance with the terms of articles 6, 7 and 8, during at least the six months prior to the presentation of the request, in the form continued

This requirement will not be required in cases of birth, adoption, custody with the purpose of adoption or permanent family fostering of minors, family reunification of minors, in the case of women victims of gender violence or victims of trafficking human beings and sexual exploitation, or in other justified cases that can be determined by regulation.

4. The requirements related in the previous sections must be fulfilled at the time of submission of the application or at the time of requesting its review, and maintained when the resolution is issued and during the time of collection of the minimum vital income.”

Article 21 of this same Law 19/2021 regulates the manner of certifying compliance with the requirements just mentioned, in the following terms:

"1. The identity of both the applicants and those who form the cohabitation unit will be certified through (...).

2. Legal residence in Spain will be proven through (...).

3. The address in Spain will be verified with the registration certificate.

4. The existence of the cohabitation unit will be proven with the family book, civil registry certificate, **and with the data in the municipal registers relating to those registered in the same home. For this purpose, the National Institute of Social Security will have access to the coordination database of the Municipal Registers of the National Institute of Statistics for the confirmation of the required requirements.**

However, **when it cannot be deduced from it that it matches the data that has been stated in the request for the benefit, the contribution of the corresponding certificate of registration, historical and collective for the period required in each case, will be requested, referring to the domiciles where the members of the coexistence unit reside or have resided, issued by the City Council pursuant to the provisions of article 83.3 of the Regulation of Population and Territorial Demarcation of Local Entities.**

Both the data obtained from the National Institute of Statistics and, where appropriate, the aforementioned registration certificate, will also serve to prove the existence of the cohabitation unit referred to in article 6 or that the applicant referred to in the article 4.1.b) lives alone or shares a home with a cohabitation unit of which it is not part.

For the purposes of the data relating to the municipal Register in accordance with the provisions of the previous paragraphs, the consent of the persons registered in the applicant's domicile will not be required.

(...).

5. The accreditation of having lived independently of the parents, guardians or foster parents, for at least two years as provided for in article 10.2, **will be made through the data provided by the National Statistics Institute or, as the case may be, the certificate of historical and collective registration in which all the persons registered in the applicant's domicile during said period are listed, in accordance with the provisions of section 4.**

A homeless person is one who lacks a roof and habitually resides in the municipality and will be accredited through registration in a fictitious address in application of the corresponding technical instructions to the City Councils on the management of the municipal register.

For the purposes of the data relating to the municipal register in accordance with the provisions of the previous section, the consent of the persons registered in the applicant's domicile will not be required.

(...)"

Of this regulation it is worth noting, for the purposes that concern, that the legislator has established expressly the possibility that the competent body can access the data of the Municipal Registers necessary to confirm that the person requesting the benefit meets the legally required requirements (article 21, sections 4 and 5). This access, however, is not expected to be carried out directly through access to the Municipal Register of Inhabitants but through the consultation of the data held by the National Institute of Statistics (INE).

In this regard, it should be remembered that, in accordance with article 17.3 of the LRBRL and article 65 of the RPDTEL, the Town Councils must send monthly to the INE the data variations that have occurred in the data of the municipal registry office.

In relation to this communication of data, the same article 21 (sections 4 and 5) of Law 19/2021, cited, provides that the consent of the persons registered in the domicile of the person requesting the benefit will not be required .

At this point, it is also appropriate to mention article 23.1 of Law 19/2021, which provides the following:

"1. **In the provision of information** in relation to the personal data that must be made to the Social Security Administration for the management of this provision, the provisions of sections 1 and 2 of article 71 of the consolidated text of the General Social Security Law, approved by Royal Legislative Decree 8/2015, of October 30. The provision of information **will not require the prior consent of the interested party, nor of the persons who are part of the coexistence unit, as it is a data treatment of those referred to in articles 6.1.e) and 9.2.h) of the Regulation** (UE) 2016/679 of the European Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of this data and by which the Directive is repealed 95/46/EC".

The aforementioned article 71 of the LGSS regulates, in its section 1, several cases of communication of information to the Social Security Administration, among which, **"by the Institute National Statistics will be provided** to the managing entities of the Social Security

responsible for the management of economic benefits, as well as the maritime and health training of sea workers, **the address data related to the municipal register referring to the period that is required, including, where appropriate, those of the historical register and/ or collective of the domicile, as well as where the citizens reside or have resided, when said data can be related to the birth, modification, conservation or extinction of the right to said benefits in any procedure,** as well as with the updating of the operating information in the databases of the Social Security system" (letter d)).

It turns out, therefore, that any communication of data from the Population Register by the INE to the competent body, when the latter requires it for the exercise of the functions of checking the requirements required to be a beneficiary of the minimum vital income attributed to him by Law 19/2021, would find coverage in these legal rules and could be made on the basis legal basis of article 6.1.e) of the RGPD.

Therefore, at the outset, when faced with a request for this type of financial benefit submitted by a citizen, the competent body to manage it must consult the INE (not the City Council) for the data from the Register that requires respect for the applicant and the rest of the people registered at the address indicated in the application, in order to check that they all meet the requirements required to be beneficiaries and, consequently, to be able to properly manage the benefit .

VI

However, the same article 21 of Law 19/2021 (sections 4 and 5), previously mentioned, foresees the possibility that the competent body will ask the person requesting the minimum living income to contribute the corresponding certificate of historical and collective registration, which must be issued by the City Council, in the event that the data from the Register consulted at the INE do not match those stated in the application for the benefit .

Given this, and given the request for data from the Register to the City Council, it cannot be ruled out that this request is motivated by the fact that the person requesting the minimum living income has chosen not to provide said registration certificate to the body competent to manage it.

It must be taken into consideration that Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC), recognizes the person interested in the administrative procedure the right not to present data and documents that are already in the power of public administrations or that have been drawn up by them (article 53.d)), among others.

This right must be put in connection with article 28.2 of the same LPAC, which, in the wording given by the twelfth final provision of the LOPDGDD, establishes the following:

"2. Those interested have the right not to provide **documents that** are already in power of the current Administration or **have been prepared by someone else Administration The current administration will be able to consult or collect said information documents unless the interested party objects to it.** There will be no opposition when the provision of the document is required in the framework of the exercise of powers sanctions or inspection.

The Public Administrations must collect the documents electronically a through its corporate networks or by consulting data brokerage platforms or other electronic systems enabled for the purpose.

When it comes to mandatory reports already prepared by an administrative body different from the one that processes the procedure, these must be sent within ten days days to count from your request. Once this deadline is met, the interested party will be informed that You can provide this report or wait for it to be sent by the competent body.”

This article expressly provides for the possibility of consulting or collecting documents held by another public administration (such as the City Council) by the acting administration (in this case the body competent to manage the benefit), provided that the affected person or persons do not object to this consultation (opposition which should not be confused with the right of opposition regulated in article 21 of the RGPD).

As this Authority has held in previous opinions (among others, CNS 56/2016, CNS 35/2017, CNS 69/2017, CNS 23/2019 or CNS 26/2020, available on [the Authority's website](#)), the treatment referred to in this article of the LPAC is lawful on the legal basis of article 6.1.e) of the RGPD, which would legitimize the treatment, without consent, of all those personal data that are necessary for the fulfillment of a mission in the public interest or the exercise of public powers, except for the special categories of data, in respect of which it would also be necessary to have one of the enabling circumstances established in article 9.2 of the RGPD.

Thus, in the event that the citizen chooses not to provide the required certificate, article 28.2 of the LPAC could be applied as a basis for the consultation by the body competent to manage the provision of the data of the Municipal register of inhabitants available to the City Council in relation to the person applying for the minimum living income and all the people registered in the address for the indicated period of time, in order to verify the concurrence of the requirements required by to be beneficiaries. In other words, the communication of this data by the City Council to the competent body would result in lawful data processing.

This, as long as the applicant or, where appropriate, any member of his family unit has not objected to the consultation of these data from the Register by the competent body, since it is necessary to have previously informed about this end and to facilitate the exercise of this possibility (on this issue we refer to the considerations made in particular in opinion [CNS 26/2020](#)).

The terms in which the request for the certificate is made at the City Council ("to see the inhabitants who do not give their registration data since it is necessary to be able to solve the Minimum Vital Income file") may make you think that in the case raised, the applicant or any member of his family unit could have objected to the consultation of his personal data. If this is the case, it must be borne in mind that the City Council would not be able to communicate or deliver the requested collective historical registration certificate and that this may negatively affect the granting of the benefit.

For this reason, it is important that when the affected person is informed of the possibility of objecting to the communication, he is also warned of the effects that this may have on the recognition of the benefit if he has not provided the necessary documentation, given that your refusal to communicate the data, if the said registration certificate is not provided, would prevent the competent body from having the necessary information to be able to verify compliance with the requirements required to be beneficiaries of the income vital minimum

In accordance with the considerations made so far in relation to the proposed query, they are made next,

Conclusions

The competent body for managing the minimum vital income has a specific access route to the data of the Municipal Register that are necessary for the processing of the benefit such as the consultation of this information from the registers available to the INE (Article 21 Law 19/2021).

In the event of a mismatch between the data consulted at the INE and those specified in the application for the benefit, this body may require the provision of the historical and collective registration certificate. If you do not provide it, you can request this information from the City Council on the basis of the authorization conferred by article 28.2 of the LPAC, unless one of the affected persons opposes it. In any case, it is important to warn them of the consequences of this opposition.

Barcelona, March 10, 2022

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