CNS 8/2022

Opinion in relation to the query made by a city council on the use of information from various databases for the application of a surcharge on Property Tax Real estate in permanently vacant homes

A letter from the Data Protection Delegate of 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 using a municipal database with tax information for to a different purpose consisting in applying sanctions to the owners of homes unjustifiably vacated.

Given that the information provided in the consultation did not make it possible to clearly know the personal data subject to treatment, the origin of this data, or the intended specific purpose, clarification is requested from the City Council on these aspects.

In response to this request, the City Council provides the following information:

- The database with tax information is the one related to the management of the Tax on Real Estate (IBI).

- This database contains information on the subject liable and liable to pay taxes, i those necessary to establish the taxable base and the tax debt.

- The ulterior purpose for which we want to have this data is the liquidation of the surcharge on the IBI for those empty or permanently unoccupied homes in the municipality, provided for in article 72.4 of the Consolidated Text of the Tax Regulatory Law premises (TRLHL), approved by Royal Legislative Decree 2/2004, of March 5, and developed by fiscal ordinance number 3.

- The data would be used to determine the homes susceptible to this surcharge next:

    o Data on water consumption in homes, which would be provided by the company providing the service, 100% owned and managed by the City Council.

    o Data from the Municipal Register of Inhabitants, to check if there are people registered

    o Data from the IBI register relating to the owners of the homes affected by the surcharge.

The City Council considers whether, taking into account that it would not be a communication or transfer of data, the aforementioned processing could be carried out for the ulterior purpose indicated and on what legal basis.

Having analyzed the consultation and the information provided, in view of the current applicable regulations, and in accordance with the report of the Legal Counsel, I issue the following opinion.

I

(...)

II

The City Council proposes the possibility of using certain information from different databases to apply a surcharge on the IBI to certain homes in the municipality for the reason that they are permanently unoccupied.

At the outset, in order to detect the properties to which the aforementioned surcharge applies, it is intended to use the data relating to water consumption that would be provided by the company that provides the water supply service, and also the data from the Register municipality of inhabitants.

Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), extends its scope of protection to personal data understood as "all information about an identified or identifiable natural person ("the interested party"). 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 identity, will be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person" (article 4.1).

The data of legal entities are therefore excluded from the scope of protection of the RGPD, as specified by the RGPD itself by establishing that "the protection granted by this Regulation must apply to natural persons, regardless of your nationality or 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" (Consideration 14).

Therefore, it should be pointed out that information on the water consumption of a home does not always constitute personal data subject to the principles and obligations of the RGPD. The information relating to the consumption of a home owned by a legal entity, if not can associate or relate without disproportionate efforts to identified or identifiable natural persons, it would not, in principle, be personal information protected by the regulations of Data Protection.

Instead, information on water consumption that may refer directly or indirectly to natural persons (owners, tenants or occupiers), which the water supply company has, are personal data that are protected by the RGPD.

III

The RGPD defines data processing as "any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction , consultation, use, communication by transmission,

diffusion or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction" (article 4.2).

Article 5.1.a) of the RGPD establishes that all processing of personal data must be lawful, fair and transparent (principle of lawfulness, loyalty and transparency).

Article 6.1 of the RGPD regulates the legal basis on which the processing of personal data can be based, among which the legal basis of section 1.e), relating to "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".

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), data processing can only be considered based on the legal basis of article 6.1.e) of the aforementioned RGPD when it is established by a rule with the rank of law.

The domestic potable water supply service is a publicly owned service, as can be seen from article 66.3.l) of the Consolidated Text of the Municipal and Local Regime Law of Catalonia, approved by Legislative Decree 2/2003 , of April 28 (TRLMRLC)).

In accordance with articles 67.a) of the TRLMRLC and 26.1.a) of Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL), the supply of potable water is one of minimum public services that all municipalities must provide. The City Council, as owner of the service, is responsible for guaranteeing users the correct functioning of the same and is obliged to ensure that its management is carried out in the most sustainable and efficient way possible, directly or indirectly (article 249 TRLMRLC).

Therefore, in accordance with these provisions of the local regulations, the City Council is legitimate for the processing of the data necessary for the provision of the service on the legal basis of article 6.1.e) of the RGPD.

The City Council can opt for a system of direct or indirect management of the drinking water supply service. In the present case, according to the council itself, the service is managed directly through a limited company with wholly municipal capital.

Therefore, from the point of view of data protection regulations, the City Council will have in this case the condition of person in charge of the treatment (Article 4.7 RGPD) of the user data necessary for the provision of the service.

The City Council is also responsible and is authorized to process the data necessary for the management of the Municipal Register of Inhabitants on the legal basis of Article 6.1.e) of the RGPD and the provisions of the local regulations regarding this registration.

According to article 16.1 of the LRBRL, "the municipal register is the administrative register where the residents of a municipality are listed. Your data constitutes proof of residence in the municipality and of habitual residence in the same. (…)".

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

And article 17.1 of the LRBRL provides that "the formation, maintenance, revision and custody of the Municipal Register corresponds to the City Council, in accordance with what the legislation establishes of the State (…). "

At this point, it should be noted that the data treatments carried out by public administrations are also subject, and among others, to the principle of purpose limitation (Article 5.1.b) RGPD), according to which the data have been to be collected for specific, explicit and legitimate purposes, and must not be subsequently processed in a manner incompatible with these purposes.

Therefore, it must be taken into account that the treatment carried out by the City Council of the personal data mentioned should, from the outset, be what is necessary to achieve the purposes to provide the water supply service and management of the Municipal Register of indicated inhabitants.

However, as can be seen from article 5.1.b) of the RGPD, cited, this data could also be used for a different ulterior purpose, such as the application of a surcharge on the IBI, in to the extent that it is a compatible purpose with which, in each case, justified the collection initial data.

IV

In relation to the possible compatibility of purposes, it is necessary to mention article 6.4 of the RGPD, which establishes the following:

> "4. When the treatment for a purpose other than that for which the personal data was collected is not based on the consent of the interested party or on the Law of the Union or of the Member States that constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives indicated in article 23, paragraph 1, the person responsible for the treatment, in order to determine whether the treatment with another purpose is compatible with the purpose for which the personal data were initially collected, will take into account, among other things:
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> a) any relationship between the purposes for which the personal data have been collected and the purposes of the subsequent treatment provided;
> b) the context in which the personal data have been collected, in particular with regard to the relationship between the interested parties and the controller;
> c) the nature of personal data, in particular when special categories of personal data are treated, in accordance with article 9, or personal data relating to criminal convictions and infractions, in accordance with article 10;
> d) the possible consequences for the interested parties of the planned subsequent treatment;
> e) the existence of adequate guarantees, which may include encryption or pseudonymization."

Thus, it is necessary to take into account, in the absence of consent of the affected persons, the existence of a rule with the rank of law that can provide cover for the use of the aforementioned data (water consumption and register data) for a new purpose.

As we have seen, in the present case the information wants to be used for the purpose of applying a surcharge on the IBI.

Article 60 of the TRLHL defines the IBI as "a direct tax of real character that taxes the value of real estate in the terms established in this law".

The taxable event of the IBI is the ownership of rights over immovable property, whether rustic, urban or the so-called properties of special characteristics (article 61.1 TRLHL), and the holders of the right over the property are liable, as taxpayers 'property, whether natural or legal persons or the entities without personality referred to in article 35.4 of Law 58/2003, of 17 December, general taxation (article 63).

The taxable base of the IBI is the cadastral value set in accordance with what is established in the Revised Text of the Real Estate Cadastre Law, approved by Royal Legislative Decree 1/2004, of March 5. On the liquidated base, which is the result of applying to the taxable base the reduction provided for in article 67 of the TRLHL, the type of assessment established by the respective City Council is applied within the limits of article 72 of the TRLHL. And articles 73 and 74 of the TRLHL provide for mandatory and optional bonuses, respectively, which are applied to the full fee to determine the liquid fee.

Article 72.4 of the TRLHL regulates a surcharge on the liquid portion of this tax for permanently vacant residential use urban properties and establishes the procedure for its application, in the following terms:

> "(...)
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> In the case of **residential buildings that are permanently vacant, the councils may demand a surcharge of up to 50 percent of the net tax rate.** Within this limit, the town councils may determine by fiscal ordinance a single surcharge or several depending on the duration of the period of vacancy of the property.
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> The surcharge, which **will be required from the subjects liable for this tax,** will accrue on 31 December and will be settled annually by the councils, once **verified vacancy of the building** on that date, together with the administrative act for which this is declared.
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> For these purposes, permanent vacant property will be considered to be that which remains vacant in accordance with what is established in the corresponding sectoral housing regulations, regional or state, with legal status, and in accordance with the requirements, means of proof and procedure established by the tax ordinance. In any case, **the municipal declaration as a permanently vacant property will require** the previous hearing of the passive subject and **the accreditation by the City Council of the indications of vacancy, to be regulated in said ordinance, within which those relating to the data of the municipal register, as well as consumption of supply services."**

For the determination of what is to be understood by permanently vacant property, the transcribed article 72.4 of the TRLHL makes a reference to what is established by the regional or state housing sector regulations with the rank of law, with the requirements and means of proof and the procedure that the corresponding fiscal ordinance must establish.

Article 3.d) of Law 18/2007, of September 28, on the right to housing (LDH), to which this article of the TRLHL refers, defines empty housing as that "which **remains unoccupied permanently, without cause justified, for a period of more than two years.** For this purpose, the transfer for work reasons, the change of address due to a dependency situation, the abandonment of the home in a rural area in the process of losing

population and the fact that the ownership of the house is the subject of a judicial dispute pending resolution. Occupancy without a legitimate title does not prevent a home from being considered empty".

For its part, article 7 of the municipality's IBI tax regulation establishes, for the purposes that concern, the following:

"C) - A surcharge of 50 percent of the net portion of the tax is applied to properties for residential use that are permanently vacant.

The surcharge will accrue on December 31 and will be settled annually by the town hall, once the property's vacancy has been verified on that date, together with the administrative act by which this is declared.

For these purposes, property that remains vacant in accordance with the requirements established in Law 18/2007, of December 28, on the right to housing of the Generalitat de Catalunya, will be considered a permanently vacant property.

In accordance with article 3.d) of Law 18/2007, of 28 December, on the right to housing of the Generalitat de Catalunya, vacant properties will not have the condition of unoccupied housing without justifiable cause for relocation for work reasons, change of address due to a dependency situation, abandonment of the home in a rural area in the process of population loss and the fact that the ownership of the home is the subject of a legal dispute pending resolution.

In any case, **the municipal declaration** as permanently vacant property **will require** the prior hearing of the taxable person and **the accreditation by the city council of the indications of unemployment, which must be given** simultaneously and without a solution of continuity, **for at least the 2 years prior to the accrual of the surcharge, and which will be based on :**

- **The non-inclusion in the municipal register of inhabitants of any resident** who has declared this house as their address of residence.
- **The lack of a contract or policy for the drinking water supply service, or if available, not presenting consumption during the two-year period of unemployment.**

These elements will be appreciated ex officio by the City Council, after obtaining the necessary information from the services and dependent entities of the municipality, in application of art. 94 of Law 58/2003, of December 17, General Taxation.

The procedure for declaring permanently vacant residential real estate will be **initiated by means of a resolution stating the signs of the vacancy, which will be notified to whoever holds the status of subject to the IBI of the property affected** by the procedure on the accrual date of the surcharge.

Within a period of 15 days, counting from the day after the notification of the aforementioned resolution, the interested party may formulate the allegations he deems appropriate, as well as provide any means of proof in defense of his right (art. 99 of Law 58/2003, of December 17, general taxation).

Based on the allegations and evidence provided, the procedure will end with the declaration, if appropriate, of a permanently vacant residential property and the liquidation

of the surcharge of 50% of the net portion of the tax corresponding to the date of accrual of the surcharge.

Against the declaration of permanently vacant residential use property, the interested party may file an appeal for reinstatement within one month."

Therefore, in accordance with these forecasts, the application of the surcharge on the IBI requires the prior municipal declaration of the property as permanently vacant, which must necessarily be carried out from the accreditation by the City Council of the indications it may have regarding the vacancy of the property.

Article 72.4 of the TRLHL expressly provides as indicators of unemployment both those relating to the data of the Municipal Register of Inhabitants and the consumption of supply services, in the terms specified in the corresponding municipal ordinance. In this case, the applicable ordinance foresees using for these purposes the lack of people registered in the home and the lack of a contract for the drinking water supply service or the lack of water consumption in that home, for at least the two years prior to accrual of the surcharge.

Therefore, this precept of the TRLHL would be the enabling legal rule for the change of purpose in the treatment of data linked to the provision of the water supply service in the municipality and the management of the Municipal Register of Inhabitants, referred to in the present inquiry

Consequently, it can be concluded that, within the framework of the procedure to apply the surcharge on the IBI established by article 72.4 of the TRLHL and specified in the fiscal ordinance, the information available to the City Council on the homes could be used in respect of which there are no water consumptions or people registered in the last two years.

It would be a different matter if the data on water consumption and from the Municipal Register were to be used for the detection of unoccupied homes within the framework of the procedure to declare the anomalous use of homes regulated in article 41.3 of the LDH.

In this case, it should be noted that the use of said information for this other purpose would not have sufficient legal authorization, given that the LDH only foresees its use once the existence of certain unoccupied homes in the municipality has been detected through the systems explained in article 41.4 of the LDH or other mechanisms that can be established (such as inspections), with the sole purpose of confirming this situation afterwards, and not before.

On this question, which differs from the one now examined, we refer to the considerations made in the opinion CNS 19/2017, which can be consulted on the Authority's website.

v

Once the homes susceptible to the surcharge on the examined IBI have been detected, it is also considered to use the data from the IBI Register relating to the owners of these homes (identity and fiscal address, taxable base and liquid share of the IBI of the year immediately preceding the accrual of the surcharge) for this purpose.

In accordance with articles 60 et seq. of the TRLHL, mentioned above, the City Council has this information with tax significance for the effective application of the IBI and is authorized for its treatment on the legal basis of the article 6.1.e) of the RGPD.

Article 95.1 of Law 58/2003, of December 17, General Taxation (LGT), applicable to local taxes (Article 2 TRLHL), establishes that "data, reports or records obtained by the Tax Administration in the performance of their functions have a reserved character and may only be used for the effective application of the taxes or resources whose management is entrusted to them and for the imposition of the sanctions that apply, without being transferred or communicated to third parties, unless the transfer tenga por objeto: (…)".

By application of the LGT, the personal data that must be treated by the City Council as responsible for the management of the IBI are reserved in nature and can only be processed for the effective application of this municipal tax (or , if applicable, for the imposition of penalties in tax matters).

In the present case, we are faced with a surcharge that is set at 50% of the liquid share of the IBI and which is required from those who hold the status of a subject subject to the IBI of the property declared as unoccupied on a permanent basis on the date of accrual of the surcharge, that is 31 December (Article 72.4 TRLHL and Article 7.c) Fiscal Ordinance).

In accordance with article 58 of the LGT, the tax debt is made up of the quota or amount to be paid that results from the main tax obligation or the obligations to make payments on account and also, if applicable, the surcharges legally enforceable on the bases or quotas, in favor of the Treasury or other public bodies (section 2.d)).

The settlement of the surcharge would form part of the effective application of the IBI, given that its determination is necessary to establish the tax debt to be satisfied by the liable subject of this tax, in whom the circumstance of being the holder of a property permanently vacant.

Therefore, in this case, we would not be faced with a change of purpose in the treatment of the data from the IBI register available to the City Council, but with a use of tax information for the effective application of taxes as expressly provided for in article 95.1 of the LGT.

Consequently, it is possible to access the data from the IBI register relating to the subject liable for the IBI of this type of property, which is mentioned in the query, which are necessary for the settlement of the surcharge.

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

Conclusions

For the purpose of applying the surcharge provided for in article 72.4 of the TRLHL, you can access the information available to the City Council regarding the homes for which they do not exist water consumption or people registered in the last two years, as well as the data from the IBI Register relating to the owners of these homes.

Barcelona, March 24, 2022