

Report in relation to the Draft order establishing the procedure to validate the training of consumer mediators and a reference syllabus to accredit their training by mediation entities

Background

It is presented to the Catalan Authority for the Protection of the Draft Order establishing the procedure to validate the training of consumer mediators and a reference agenda to accredit their training by the mediation entities.

The Project is accompanied by the supporting report and the impact assessment report.

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

Legal Foundations

I

(...)

II

Article 131-1 of Law 2/2010, of July 20, of the Consumer Code of Catalonia provides that the public administrations of Catalonia must promote, in collaboration with consumer organizations, the availability for to consumers and to employers of operational systems for the voluntary resolution of conflicts and complaints in the field of consumption. In addition, it provides that they are responsible for the exercise of the promotion, management and development functions of consumer mediation and arbitration that the legislation attributes to them.

Regarding consumer mediation, article 132-1 of the Consumer Code of Catalonia provides that it is a procedure that is characterized by the intervention of an impartial and expert third party, whose purpose is to help the parties and facilitate the obtaining a satisfactory agreement by themselves.

The mediating person is that natural person who has the knowledge and specialized skills necessary to carry out consumer mediation (art. 2.3

of Decree 98/2014, of July 8, on the mediation procedure in consumer relations).

In relation to said knowledge and specialized skills, article 32.2 of Decree 98/2014 provides that public consumer services and consumer organizations must ensure that the mediators they appoint have the knowledge and skills it establishes said Decree. This duty is also required to

the associations and professional associations that exercise mediation, in the sense of ensuring that the mediators they appoint have this knowledge and skills, without prejudice to the knowledge they have in the matters referred to their sectors of activity.

Article 33 of Decree 98/2014 states that mediators must have training in the legal framework in consumer matters, of a minimum duration of 120 hours, and also in consumer mediation techniques, of a minimum of 60 hours. The training must be certified by means of a certificate of attendance and utilization issued by the entity that provided the training.

Decree 261/2019, of December 10, amending Decree 98/2014, of July 8, on the mediation procedure in consumer relations, provides for the following in the transitional provision:

"During the first year from the entry into force of this Decree, mediating entities, in accordance with its article 2.2.a), may validate the training of consumer mediating persons who have, cumulatively, the following professional experience and training:

a) A minimum of six months of experience in the last three years as a consumer mediator in any of the mediation entities.

b) A minimum of 60 hours of training that includes knowledge of the regulations applicable to consumer relations, in accordance with the provisions of Law 22/2010, of July 20, of the Consumer Code of Catalonia.

The body that must validate the requirements of the previous section is the Catalan Consumer Agency, through the procedure that must be established by an order of the person in charge of the Department competent in matters of consumption, within the term of three months."

And, as for the curriculum of the trainings, the third final provision provides for the following:

"The person in charge of the Department competent in matters of consumption is authorized to adopt the necessary provisions to establish a reference agenda that includes the aspects provided for in article 33, as well as the development of specific training programs based on the new technological, economic and social challenges and commitments."

On the basis of these forecasts, the Project of order sent has as its object "[...] to establish the procedure to validate the training of consumer mediators, provided for in the Transitional Provision of Decree 261/2019, of 10 of December, amending Decree 98/2014, of 8 July on mediation procedures in consumer relations, as well as

establish a reference agenda on the knowledge that people who provide mediation services to mediation entities must have" (article 1).

The draft order consists of three chapters, the first relating to the *procedure to validate the training of consumer mediators* (articles 2 to 5), the second chapter regulates the *reference syllabus on the knowledge that people who provide mediation services to mediating entities* (Article 6) and a third chapter regarding data protection (Article 7).

In advance, it should be noted that this report is issued exclusively with regard to the assessment of the impact that the Draft Order may have from the point of view of protection of personal data. For these purposes, personal data is considered "*any 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 name, an identification number, location data, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of this person*" (article 4.1 RGPD).

III

Article 6 of the Project regulates the minimum content of the syllabus that the consumer mediation entities must have as a reference to assess the training of the mediators of consumption

Among the subjects included in the part dedicated to training in consumer matters (art. 6.1) is "*data protection: rights and duties of consumers*".

At the outset, it is positively valued to have included this reference among the aspects to be taken into account when assessing the training of consumer mediators. However, it should be noted that this reference does not exhaust all the aspects that are of significant relevance to consumers, from the point of view of the right to data protection.

It is clear that in consumer relations, understood as any relationship between an employer, intermediary or the Administration as a provider of goods and services and consumers (art. 111-2. m) of the Consumer Code of Catalonia), personal data is not always processed. However, this will very often be the case, either for data processing strictly necessary for the maintenance of commercial relations with natural persons, or for other associated issues, such as marketing.

In this sense, it is appropriate to refer to *Guidelines 2/2019 on the processing of personal data pursuant to Article 6, paragraph 1, letter b) of the RGPD in the context of the provision of online services to those interested in European Data Protection Committee (EDPB)* (https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-22019-processing-personal-data-under-article-61b_es).

Aspects such as the analysis of the legal basis for the processing of consumer data, the principle of minimization, the collection of consent for other purposes,

commercial communications, personalized advertising, advertising exclusion systems, dark patterns on websites, profiling of consumers, the use of artificial intelligence mechanisms, etc. are aspects that can be clearly relevant to the defense of the rights of consumers.

Therefore, it is proposed to incorporate in the agenda also other issues of data protection regulations that may have an impact on consumer relations, in particular, relating to the principles that must govern treatments (art. 5.1 of the RGPD), advertising exclusion systems (Title IV of the LOPGDD), credit information systems or profiling and the use of intelligence artificial intelligence

For these purposes, it seems that at least the section relating to the matter of data protection could be drafted in a broader way, without prejudice to the fact that, if possible, it could be desirable to analyze these issues in more than one topic. Thus, if a single topic dedicated to the protection of personal data is kept, wording similar to the following could be incorporated:

“• Data protection: principles; consumer rights and duties; regime of commercial communications for advertising purposes; credit information systems; profiling and use of artificial intelligence.”

IV

Article 7 of the Project regulates the *Processing of the personal data of applicants* in the following terms:

"In accordance with Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD) and with the provisions of Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27, 2016, regarding the protection of natural persons with regard to the processing of personal data and the free movement of such data (RGPD), personal data will be treated in accordance with the principles of security and confidentiality established by the regulations on data protection.

However, we provide applicants with the following basic information on the processing of personal data that they will provide to the Catalan Consumer Agency for the validation of training as consumer mediators:

- *Data controller: Catalan Consumer Agency - c/ Foc 57, 08038, Barcelona*
- *Data Protection Officer: lopd.acc@gencat.cat*
- *Purpose: to process requests for validation of the training as mediators of consumption and issue the corresponding resolutions.*
- *Recipients: none are foreseen, except for those communications that are to us legally required.*

- *Rights of interested persons: You can request access, rectification or deletion of data, and limitation or opposition to treatment. To exercise these rights, you can contact our Data Protection Officer at lopd.acc@gencat.cat, or use the generic request that you will find at the following link. You can also submit a claim to the Catalan Data Protection Authority through the Authority's electronic headquarters .*

- *More information on the processing of your personal data: [link](#)".*

At the outset it should be pointed out that the data protection regulations do not oblige this regulation to be included in the regulatory rules governing a certain matter. The first part of article 7 derives directly from the content of the RGPD and the LOPDGDD, so it would not strictly be necessary to include it in a regulatory standard.

With regard to the second part of the article (right to information), it should be remembered that article 13 of the RGPD provides that the information relating to the treatment, when the personal data is collected directly from the interested party, is must facilitate at the time of collection.

Consequently, and without prejudice to the fact that, if it is considered appropriate, the second part of article 7 (which includes the basic information of the treatment) can be maintained, noting that this would not exempt the obligation to provide the information in the time of data collection. To the extent that maintaining this information in the content of the draft Order may generate confusion for the administrative bodies that must provide the information, in the sense that they may mistakenly understand that they no longer have to fulfill the duty of information, it would be appropriate to clarify that they must fulfill it anyway, or even the deletion of this second section could be considered.

It must be taken into account, on the other hand, that including the information in the draft Order may make it difficult, at the time, if an adaptation is to be made in its content.

v

Aside from the considerations that have just been made, and in the event that the content of Article 7 is maintained, some issues arising from the current wording of Article 7 are analyzed below.

Regarding the first paragraph, to the extent that the RGPD enjoys direct effectiveness and primacy over Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), in first of all, it is considered that the reference to both rules should be written in reverse.

Secondly, to point out that the name used in the project to refer to security ("principle of security and confidentiality") does not coincide with the name provided for in article 5.1.f) of the RGPD. For this reason, although the name used in the project is clear enough, it would be appropriate to refer to the "principle of integrity and confidentiality".

Thirdly, regarding the rights of the persons concerned, the basic information provides for the following:

"You can request access, rectification or deletion of data, and limitation or opposition to treatment. To exercise these rights, you can contact our Data Protection Officer at lop.d.acc@gencat.cat, or use the generic request that you will find below [link](#) You can also submit a claim to the Catalan Data Protection Authority through the Authority's electronic headquarters." _____

It is worth saying that the terms in which the aforementioned section is written can be confusing. Although the wording of article 13.2.d) of the RGPD refers simply to the "right to submit a claim to the Control Authority, it is necessary to put this provision in relation to what is established in article 77 of the 'RGPD. That is to say, the claim before the Authority for the lack of attention to rights, can only be lodged once the right has been exercised before the person in charge of the treatment and he has not attended to it adequately, either because having done so within the established period, either for matters relating to the fund.

In this sense, recital 141 of the RGPD provides that *"All interested parties must have the right to file a complaint before a single control authority, in particular in the Member State of their habitual residence, and the right to effective judicial protection in accordance with article 47 of the Charter if it considers that its rights are violated according to this Regulation or in the event that the control authority does not respond to a claim, rejects or rejects a claim in whole or in part or does not act when necessary to protect the rights of the interested [...]"*

Therefore, the following wording is proposed:

"Rights of interested persons: You can request access, rectification or deletion of the data, and the limitation or opposition to the treatment. To exercise these rights, you can contact our Data Protection Officer at lop.d.acc@gencat.cat, or use the generic request that you will find at the following [link](#). In the event of a lack of response or rejection of your request, you can submit a claim to the Catalan Data Protection Authority through [its electronic headquarters](#) of the Authority. _____

conclusion

Having examined the draft order establishing the procedure to validate the training of consumer mediators and a reference syllabus to accredit their training by the mediation entities, it is considered adequate to the provisions established in the regulations on personal data protection, as long as the considerations made in this report are taken into account.

Barcelona, June 10, 2022