



Autoritat Catalana de Protecció de Dades

Legal report in relation to the Draft Decree on the Registration of Estates with Natural Heritage and Biodiversity Conservation Initiatives

Background

The Draft Decree on the Register of Estates with Natural Heritage and Biodiversity Conservation Initiatives is presented to the Catalan Data Protection Authority so that the Authority can issue a report.

The Project is accompanied by the supporting report and the impact assessment report, as well as the preliminary legal report in relation to the draft decree, and the supplementary report to said preliminary legal report.

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

Legal Foundations

I

(...)

II

The Draft Decree consists of a preamble, ten articles, a transitional provision, a final provision, and three annexes.

According to the preamble of the Project examined, the new rule "(...) is a regulatory measure to comply with the determinations of Law 42/2007 in terms of promoting participation and activities that contribute to achieving the objectives of the Law, such as community and private initiatives to conserve natural heritage and biodiversity."

The same preamble adds that: "With the creation of the Register of Farms with Natural Heritage and Biodiversity Conservation Initiatives, the Generalitat has a tool that, on the one hand, allows the recognition of these initiatives developed by society Catalan civil society, and, on the other hand, it facilitates the application of measures aimed at promoting them such as subsidies, aid or tax benefits promoted by the Government of the Generalitat."

According to the preamble of Law 42/2007, of December 13, state, on Natural Heritage and Biodiversity, "(...) is the obligation of the Public Administrations (...); promote the use of fiscal measures to encourage private nature conservation initiatives; (...)"

Article 3.37 of the same Law 42/2007, defines territorial custody entities as those public or private non-profit organizations that carry out initiatives that include the establishment of territorial custody agreements for the conservation of natural heritage and biodiversity.

According to article 4.4 of the aforementioned Law, in the planning and management of protected areas and the conservation of habitats and species, it is necessary to encourage voluntary agreements with owners and users of natural resources, as well as the participation of civil society in the conservation of biodiversity.

According to article 76.1 of the Law: *"1. The Public Administrations will promote the custody of the territory through agreements between custody entities and private or public property owners whose main objective is the conservation of natural heritage and biodiversity."*

From a formal point of view, we note that the preamble of the Draft Decree erroneously refers to article 4.3 instead of referring to article 4.4, on the one hand, and to article 72 instead of referring to se in article 76.1, of the other).

Finally, according to article 5.2 of the same Law 42/2007:

"2. The public administrations in their respective areas of competence:

(...)

c) They will promote the use of fiscal measures and other economic incentives for the realization of private nature conservation initiatives, and for the disincentivization of those with a negative impact on the conservation of biodiversity and the sustainable use of natural heritage.

(...)."

In this context, the purpose of the draft decree examined is to *"create and regulate the Register of Estates with Natural Heritage and Biodiversity Conservation Initiatives" (art. 1).*

Article 3 of the Project defines the Register of Estates with Natural Heritage and Biodiversity Conservation Initiatives, as an administrative register of a public nature (section 1), assigned to the Catalan Nature Agency, of this with the functions contained in article 3 of Law 7/2020, of July 2, of the Catalan Nature Agency (section 2).

The Project regulates the purposes of the Registry (art. 4), the registration procedure (art. 6), the content of the registration (art. 7), and the publicity and processing of the data of the Registry (art. 8) , among other issues. Likewise, the annexes incorporate the "minimum content of the territory custody contract" (annex 1), the "minimum content of the agreement" (annex 2) and the "minimum content of the management plan of the conservation initiative" (annex 3).

Given the regulatory framework in which the Draft Decree examined is framed, the Project will involve the processing of personal data, protected by the principles and guarantees of the data protection regulations.

It is personal data *"any information about an identified or identifiable natural person (the interested party). An identifiable natural person shall be considered any person whose identity*

which 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 physical, physiological, genetic identity, psychological, economic, cultural or social of this person" (article 4.1 RGPD).

According to article 2 of the Project, it means:

"f) Management plan: planning instrument in which the specific objectives of conservation of natural heritage and biodiversity are defined for a farm or group of farms, the program of measures or management actions necessary to achieve them in a certain time and the monitoring mechanisms to evaluate the results obtained. The person who owns, leases or holds other rights on the property is responsible for the execution of the Management Plan.

g) Agreement: agreement of a general nature that contains covenants in relation to the conservation of natural heritage and biodiversity in a farm and that occurs between a public administration and an owner or a non-profit entity that has assumed management of the estate for a previous legal transaction with the property."

The data protection regulations are not applicable to information relating to legal entities (art. 4.1 RGPD).

Yes, it is applicable in relation to information that allows the direct or indirect identification of natural persons, such as persons responsible for the management of the property who apply for registration in the Register (art. 6.1), including individual entrepreneurs and professionals liberal holders who manage the estates, without ruling out, where appropriate, natural persons representing the entities responsible for the estates that may appear in the Register.

The principles and guarantees of the data protection regulations apply to the data of natural persons that may be the subject of processing in the Registry (art. 4.1 RGPD).

Therefore, at the outset, given that as a result of the creation and management of the Register of Estates with Natural Heritage and Biodiversity Conservation Initiatives, data processing of natural persons may occur, this processing must comply with the principles and guarantees of the personal data protection regulations (RGPD and Organic Law 3/2018, of December 5, Protection of personal data and guarantee of digital rights (LOPDGDD)).

III

Bearing in mind that the purpose of the Register is to recognize the natural heritage conservation commitments acquired by natural and legal persons promoting or responsible for conservation initiatives for the purposes of being able to opt for promotion measures (subsidies, aid or tax benefits), as provided for in article 4.b) of the Project, it is clear that the Register will contain data on these natural and legal persons.

This is foreseen based on the aforementioned definitions (art. 2.f) and 2.g) Project), and in article 7.1.e) of the Project, according to which the registration of each property will contain, among others, information on the **"Person or entity responsible for the management of the property"**.

The data protection regulations provide that personal data must be treated transparently in relation to the affected persons (principle of transparency, art. 5.1.a) RGPD).

For the purposes that are relevant, this translates into the desirability of the Project setting out as clearly as possible which personal data will be processed.

As this Authority has done in the past, the compliance by the data controller (art. 4.7 RGPD) of this principle of transparency makes it easier for those affected to have a clear knowledge of which data will be processed, which makes it easier, if necessary, the exercise of the rights that the data protection regulations recognize (rights of access, rectification, deletion, among others).

Taking into account the purposes of the Register (art. 4 Project), it seems clear that the responsible Administration must be able to have the appropriate, relevant and necessary information for this purpose (principle of minimization, ex. art. 5.1c) RGPD).

For purposes of clarity, and given that article 7.1 of the Project refers to the information relating to the registration of the estates, with regard to the information of the natural persons responsible for the estate (or, where appropriate, natural persons representing of the entities), a priori it seems reasonable that the responsible Administration should have data such as the first and last name, ID number and contact details of these people, in order to be able to contact them and, ultimately, comply with the purposes of the Registry itself.

Taking this into account, and from the information available, it seems reasonable that the entry in the Register could include this information.

For this reason, in application of the aforementioned data protection principles, and for the purpose of specifying the information relating to the persons responsible for estates more clearly, the following alternative wording is proposed, where appropriate, for article 7.1.e) of the Project:

"e) Person or entity responsible for the management of the estate: denomination or name and surname, ID number and contact details."

In this same sense, in the 3 annexes, the reference to which the different instruments regulated therein (territory custody contract, agreement or management plan of the conservation initiative) must contain *"Data of the parties"*, results excessively wide It would be appropriate to specify this by referring to *"Identification and contact details of the parties"*.

IV

Article 8 of the Draft Decree provides for the following:

"Publicity and processing of Registry data

8.1 The information in the Register, except for personal data, can be consulted on the website of the department responsible for the environment and on the Portal de la Transparència de la Generalitat.

8.2 The data in the Registry are subject to electronic processing and are integrated into a single database that must comply with current regulations on the protection of personal data and information security.”

Article 8.1 of the Project provides that the information in the Register, "except for personal data", can be consulted through the website of the competent Department and the Transparency Portal of the Generalitat.

At the outset, it seems that this provision of the Project is established in the sense that the personal data processed in the Registry would be excluded from a generalized dissemination, available to everyone, through the transparency portal.

Given the purposes of the Register, which aims to collect information on the farms referred to in the Project in order to recognize the commitments to preserve the natural heritage voluntarily acquired by those affected, it is clear that it is the responsible Administration that must have the information of the Registry, for the purposes of complying with these purposes. Therefore, it is appropriate from the perspective of the personal data protection regulations to provide for the dissemination of information from the Registry that excludes that of the personal data that will be processed there, since in order to comply with the purposes of the Registration does not seem justified to spread them.

Therefore, from the perspective of data protection regulations, this provision of article 8.1 of the Project is positively assessed.

The provision of article 8.2, which explains the necessary compliance with data protection regulations, and the reference to information security, is also positively valued.

In this sense we remind you that, according to article 5.1.f) of the RGPD, personal data must be treated in such a way as to guarantee adequate security, including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures (principles of integrity and confidentiality).

conclusion

Examined the Draft Decree on the Register of Estates with Natural Heritage and Biodiversity Conservation Initiatives, as long as the considerations made in this report are taken into account.

Barcelona, June 30, 2022