



Autoritat Catalana de Protecció de Dades

## Legal report in relation to the draft law amending Law 22/2010, of July 20, of the Consumer Code of Catalonia

### Background

The draft law amending Law 22/2010, of July 20, on the Consumer Code of Catalonia, is presented to the Catalan Data Protection Authority, for the issuance of the corresponding report.

The Project is accompanied by the General Report of the Preliminary Project.

Having analyzed the Draft Law, taking into account the current applicable regulations, and in accordance with the report of the Legal Counsel, I report the following:

### Legal Foundations

I

(...)

II

With regard to the regulatory framework in which the preliminary project is located, mention must first be made of article 123 of the Statute of Autonomy of Catalonia, which attributes to the Generalitat exclusive competence in matters of consumption.

According to the Statement of Reasons for the Preliminary Project, this "*incorporates into the Catalan legal system and, with regard to the aspects that affect consumer relations, Directive (EU) 2019/770 of the European Parliament and of the Council, of 20 May 2019, relating to certain aspects of contracts for the supply of digital content and services, Directive (EU) 2019/771 of the European Parliament and of the Council, of 20 May 2019, relating to certain aspects of contracts sale of goods, Directive (EU) 2019/2161 relating to the better application and modernization of EU consumer protection rules amends Directive 2011/83 / EU. The changes are based on increased protection for EU consumers in several areas, such as shopping in online marketplaces, transparency of price personalization and classification of online offers and consumer rights to use "free" online services and Directive (EU) 2019/882 of the European Parliament and of the Council, of April 17, 2019, on accessibility requirements for products and services.*"

The draft law consists of a statement of reasons, 177 articles, and two final provisions.

To the extent that, as a result of the provisions of this, data processing of natural persons, in the capacity of entrepreneurs, consumers or users, may occur, this processing will be subject to the principles and guarantees of the regulations for the protection of personal data (RGPD and Organic Law 3/2018, of December 5, on Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD)).

At the outset, article 3 of the draft modifies certain sections of article 111-2 of Law 22/2010 (hereinafter, the Consumer Code). Among others, the draft refers specifically to "consumers and users" (section a), "vulnerable consumers" (section c), and "entrepreneurs" (section d).

With regard specifically to vulnerable consumers, it is worth saying that the provision of article 111-1.c) in its new wording, includes the special protection that these people must have according to Directive 2019/2161, cited (recital 54). It is worth noting that State Law 4/2022, of February 25, on the protection of consumers and users in situations of social and economic vulnerability, also refers specifically to vulnerable consumers (art. 1), in similar terms those of the Preliminary Project.

The Preliminary Project aims to integrate the aforementioned Directives into the Catalan system, which in the area in question are expressly referred to the RGPD (art. 3.8 Directive 2019/770, or considering 33 Directive 2019/2126), making agreeing that the processing of personal data, in this case, in the field of consumer relations, must be governed by the RGPD.

From the perspective of the protection of personal data, it must be borne in mind that the regulations provide for special protection for certain categories of data and, where appropriate, for certain groups of people, such as minors (art. 9 and 12 RGPD), and pay special attention to the processing of data from vulnerable groups (considering 75 RGPD, or arts. 28.2 and 97.1.a) LOPDGDD).

Specifically, article 28.2.e) of the LOPDGDD referring to the general obligations of the person in charge and the person in charge of the treatment, establishes that for the adoption of technical and organizational measures the major risks must be taken into account which could occur in certain cases, among others, *"When data processing is carried out for groups of affected persons in a situation of special vulnerability and, in particular, of minors and persons with disabilities."*

The concept of vulnerable consumers used by the Preliminary Project would be aligned, from the perspective of the rights of consumers, with these provisions of the data protection regulations.

In this context, article 6 of the Preliminary Draft modifies article 121-3 of the Consumer Code, which would be drafted as follows:

*"The rights of vulnerable consumers are subject to special and preferential attention by the public authorities, in accordance with the provisions of this law, the provisions that implement it and the rest of the legal system."*

### III

Article 30 of the Draft, modifies article 132-2 of the Consumer Code, with the following wording:

*"1. Consumer mediation is presided over by the principles of voluntariness, impartiality and neutrality of the mediator, confidentiality and good faith, universality, transparency and territoriality.*

*(...)*

*4. The mediating person and the parties have the obligation not to disclose the information they know as a result of the mediation procedure, as well as the obligation to act in accordance with the requirements of good faith. However, the mediating person is not subject to the duty of confidentiality and is obliged to inform the competent authorities of the data that may reveal the existence of criminal acts prosecuted ex officio.*

*(...)."*

The processing of personal data must comply with the principles of the regulations, among others, the principle of integrity and confidentiality (Article 5.1.f) RGPD).

According to article 5 of the LOPDGDD:

*"1. Those responsible and responsible for data processing as well as all persons who intervene in any phase of this will be subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.*

*2. The general obligation indicated in the previous section will be complementary to those duties of professional secrecy in accordance with applicable regulations.*

*(...)."*

Therefore, there can be no doubt that mediators are subject to the duty of confidentiality and maintenance of the reserve with respect to the personal data they know through their work, as is the case with any other professional involved in the processing of personal data .

A different issue is that the mediators referred to in the Preliminary Draft, in certain circumstances, may be obliged by a duty to report, provided for in the regulations, regarding certain allegedly criminal acts.

It is worth noting that, in its current wording, the Consumer Code already refers to *"the mediating person is not subject to the duty of confidentiality and is obliged to inform the competent authorities of the data that may reveal the existence of facts crimes prosecuted ex officio."* (art. 132-2.5 Consumer Code).

However, given the wording of this article in the Draft, it must be noted that the wording of article 132-2, section 4, of the Consumer Code (art. 30 Draft) has not included this provision in full (with regard to the exception derived from knowledge of ex officio prosecutable crimes), which is fully justified and which should be contained in a

norm with the rank of law. In addition, it should be borne in mind that the duty of secrecy will have to be maintained even after the legal relationship with the person who appointed it has ended.

Therefore, the following wording is proposed:

*"4. The mediating person and the parties have the obligation not to disclose the information they know as a result of the mediation procedure, as well as the obligation to act in accordance with the requirements of good faith. The mediating person is subject to the duty of confidentiality, even after the end of their legal relationship, without prejudice, if applicable, to the duty to report in relation to criminal acts prosecuted ex officio."*

---

## IV

Article 52 of the Draft amends article 221-2 of the Consumer Code, relating to *"Information to consumers in distance consumer relations and outside commercial establishments."*

It is worth saying that the content of this article 221-2, modified in the Draft, includes several provisions of article 4 of Directive 2019/2161.

Among others, the mentioned article 221-2.1.d) provides that *"(...) if applicable, it must be reported that the price has been established in a personalized manner on the basis of taking automated decisions."* (provision that is also included in article 97.1.f) of Royal Legislative Decree 1/2007, of November 16, which approves the revised text of the General Law for the defense of consumers and users and other complementary laws ((RDL 1/2007).

This forecast is consistent with the forecasts of articles 13.2.f) and 14.2.g) RGPD, according to which it is necessary to inform those affected of the existence of automated decisions, including the creation of profiles (art. 22 RGPD), and of the consequences of the treatment for those affected.

Therefore, due to the relevance of the right provided for in Article 22 RGPD, the reference to Article 221-2.1.d) introduced in the Preliminary Draft must be evaluated positively.

## V

Article 86 of the Preliminary Draft modifies article 321-4.2, relating to *"collaboration with the inspection"*, although without introducing substantial changes. This article is written as follows:

*"2. Entrepreneurs must provide the inspectors with the information and documentation requested for the performance of their duties, including personal data without the consent of third parties, in accordance with the provisions of the data protection regulations of a personal nature."*

At the outset, and taking into account, among others, the principle of minimization (art. 5.1.c) RGPD), it is necessary to positively assess the maintenance of the express reference to the regulation of

data protection in relation to the information that may be required by the inspection staff from business people. In any case, this reference must be understood as applicable to all personal data, subject to the RGPD, that may be the subject of communication.

Within the same Title II of the Consumer Code relating to the inspection, the Preliminary Project as well modifies, among others, article 322-2 of the Code, referring to the "*Faculties of the inspector staff*" (art. 88 of the Draft).

Part of the content of this article maintains the current wording of the Consumer Code (sections e), f) og) of art. 322-2.1 Code), while in other sections the provisions for access of inspection personnel to documents, data or information related to alleged violations are extended (sections a), b) c), among others, of the art 322-2.1 Code). Sections h), i) ij) of this article are new additions.

Specifically, we note that section i) of this article is written as follows:

*"i) Require **any natural or legal person** to provide all the relevant information, data or document in any form or format and regardless of the support or the place where it is stored, even the tracing of financial and data flows, the identity of the people involved, the information on bank accounts and the ownership of websites in order to determine the alleged irregularities and their scope. (...)."*

If it is true that the ability to request information must be recognized in the inspection in necessarily broad terms, it must be taken into account that the terms in which it is configured in this article (for example by the references to the tracings of financial and data flows) could collide with other rights such as those arising from telecommunications secrecy or even banking secrecy. It would therefore be recommended to specify, as far as possible, the scope, the assumptions and conditions under which these accesses to information should be possible.

## VI

Finally, article 107 of the Draft, modifies article 333-9 of the Consumer Code, referring to "*Publicity of sanctions*", which would be drafted in the following terms:

- "1. Sanctions that have become final may be published, for reasons of exemplification and transparency, at any time prior to the prescription of the sanction established in article 335-2.*
- 2. The publicity of the penalty can be done by any means, both individually and grouped, by subjects, geographically by reasons or violations, or any other concept that is considered relevant.*
- 3. The publicity of the sanctions must, in any case, respect the regulations in force regarding the protection of personal data."*

We note that the Royal Legislative Decree 1/2007, of November 16, which approves the General Law on consumers and users, provides in article 50 that the competent public administrations can agree, as an accessory sanction, among others ( section 2):

*"2. The publicity of the light and serious sanctions imposed, when they have acquired administrative firmness, as well as the names, surnames, denomination or company name of the natural or legal persons responsible and the nature and nature of the infractions, **as long as there is a risk to the health or safety of consumers and users, recidivism in infractions of a similar nature or proven intentionality in the infraction.**"*

At the outset, we note that both the Draft and Article 50.1 of RDL 1/2007 provide for an authorization to publish the sanctions, but not an obligation to publish them in all cases.

In any case, RDL 1/2007 limits the possibility of publishing light or serious penalties (including identification data of natural persons responsible), to the concurrence of a risk to the health or safety of consumers and users, recidivism or the existence of intentionality in the infringement (art. 50.2) or lead to the dissemination of racist, xenophobic, sexist, LGBTIphobic, derogatory or discriminatory content (introduced by Final Provision seven.1 of Law 15/2022).

At the outset, it is positively valued that the Preliminary Project foresees that the publicity of the penalty can be done individually or grouped, so it must be understood that personal data will not necessarily be published in all cases, and also the provision that the publication of the sanctions must respect the data protection regulations (art. 333-9.3).

In any case, from the perspective of the principle of minimization, it would be advisable to limit the cases in which this accessory measure can be applied, either in accordance with the elements explained in article 50.2 RDL 1/2007 (concurrence of risk for health or safety, recidivism or intentionality, ...), or other factors that justify it.

## **conclusion**

Having examined the Draft Law amending Law 22/2010, of July 20, of the Consumer Code of Catalonia, it is considered adequate to the data protection regulations, as long as the considerations made in this report are taken into account .

Barcelona, July 22, 2022