

Report on the Preliminary draft of the Decree on the sanctioning authority in matters of consumption and on the procedure for the restitution of amounts unduly received, restoration of the altered situation and recovery of damages

Background

A letter from the Director of the Catalan Consumer Agency is submitted to the Catalan Data Protection Authority, requesting that the Authority issue a report on the Preliminary Draft Decree on the sanctioning power in matters of consumption and on the procedure for restitution of amounts unduly received, replacement of the altered situation and recovery of damages .

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

Legal Foundations

I

(...)

II

The purpose of the Draft Decree that is being analyzed is to modify Decree 151/2013, of April 9, on the sanctioning authority in matters of consumption and on the procedure for restitution of amounts improperly received, restoration of the altered situation and rescheduling of damages, which is the rule that regulates the different aspects of the administrative sanctioning procedure applicable to the competent public administrations in the matter of defending the rights of consumers for infractions in the matter of violation of the linguistic rights of consumers.

The modification introduced by this Draft Decree consists of incorporating a new chapter on the procedure for the adoption of substitute measures for the pecuniary penalty, which derives from the provisions of article 333-12 section 1 of Law 22/ 2010, of July 20, of the Consumer Code of Catalonia which provides for the possibility that, voluntarily, the sanctioned offender may replace the monetary penalty with an activity of another type, related to the linguistic rights of consumers and in accordance with article 333-12 section 2.

It is clear that the application of the provisions contemplated in the Draft Decree may involve the processing of information of natural persons (sanctioned persons), which must comply

with the provisions of Regulation (EU) 2016/679 , of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD) and Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of rights digital (hereinafter LOPDGDD).

This report is issued exclusively with regard to the assessment of the incidence that the Draft Decree may have from the point of view of the protection of personal data, so below are analyzed those aspects of the Project that are considered relevant in attention to the provisions of the aforementioned data protection regulations.

III

Article 44 of the draft decree establishes:

"1. Once the request has been received, it must be communicated to the competent body in terms of language policy, in order to determine the content, duration and way of carrying out the measure.

2. The communication must be accompanied by the request and the sanctioning resolution ."

It is therefore foreseen, a communication by the competent bodies to impose sanctions in the matter of consumption of information that contains personal data of the sanctioned person, specifically the request and the sanctioning resolution, to the competent body in the matter of politics linguistic

This communication, in accordance with article 4.2 RGPD, is a processing of personal data. All processing of personal data must be lawful, loyal and transparent in relation to the interested party as established in article 5.1.a) of the RGPD.

In order for a treatment to be lawful, it must meet one of the conditions provided for in article 6 of the RGPD. In the case of public administrations, legality is usually found in the cases provided for in letters c) *"the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment "* ie) *" the treatment is necessary for the fulfillment of a mission made in interest public or in the exercise of powers public given to the person responsible for the treatment "* .

It should be taken into consideration that, as can be seen from article 6.3 of the RGPD, the legal basis for the treatment indicated in letters c) and e) of article 6.1 of the RGPD must be established by the Law of the European Union or by the law of the Member States that applies to the data controller.

The referral to the legitimate basis established in accordance with the internal law of the member states requires, in the case of the Spanish State, in accordance with article 8 of Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (LOPDGDD), that the enabling rule has the status of law.

Law 22/2010, of July 20, of the Consumer Code of Catalonia provides in its article 333.12 the following:

- "1. Sanctioning resolutions as a result of infringements in the matter of consumers' linguistic rights may provide for alternative measures to the financial sanction.*
- 2. Substitute measures must consist of educational programs, activities or services related to linguistic rights, linked to the sector of activity and the circumstances in which the offense was committed.*
- 3. The substitute measure must be requested by the person or persons responsible for the infraction, before the sanctioning resolution becomes administratively final.*
- 4. The substitute measure must be requested, voluntarily, by the person or natural persons responsible for the infringement, in accordance with the provisions of article 334.1. In the event that the responsibility belongs to a legal entity, it must be requested by whoever accredits its representation, and it must be executed by the persons linked by employment or contractual relationship with the responsible legal entity.*
- 5. The procedure for requesting the substitute measure must be regulated by Government decree. The form, duration and content of the substitute measures according to the circumstances of the offense must be regulated by an order of the department competent in matters of language policy."*

Therefore, it can be understood that these provisions linked to article 6.1.e) RGPD would constitute an authorization so that in the case of infringements of the consumer's linguistic rights, the body competent to sanction can communicate to the body competent in matter of language policy information related to the sanctioning files in this matter. In addition, it can also be considered compatible with the requirement established in article 27.1.a) of organic law 3/2018, of December 7, on the protection of personal data and guarantee of digital rights (LOPDGDD).

However, article 44 of the draft decree provides that the communication to be made to the competent body in matters of language policy must be accompanied by the request for the substitute measure and the sanctioning resolution.

At this point, the principle of minimization (Article 5.1.c) RGPD must be taken into account, according to which the data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (principle of minimization) . On the other hand, article 27.2.b) of the LOPDGDD requires that the processing of data related to the commission of administrative offenses is limited to the data strictly necessary for the purpose pursued by the administration responsible for the processing.

If in principle this provision of article 44 relating to the communication of the request and the resolution can be considered proportionate, in the event that the sanctioning resolution has as its object, in addition to the sanction of infringements for the violation of the linguistic rights of consumers, other infringements specified in the consumer code for other reasons, in the communication of the resolution to the competent body in the matter of language policy, the information should be excluded that is not related to the violation of linguistic rights. In this way, it is guaranteed that no information is revealed about other offenses committed by the sanctioned offenders, beyond the information necessary so that the competent body in the matter of language policy can issue the corresponding reports in accordance with its powers.

Conclusions

Having examined the draft Decree on the sanctioning power in matters of consumption and on the procedure for restitution of amounts unduly received, replacement of the altered situation and recovery of damages, it is considered adequate to the provisions established in the regulations on protection of personal data, provided that the considerations made in this report are taken into account.

Barcelona, September 1, 2022

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