

the Draft Decree on fishing , fishing and aquaculture tourism and fishing demonstrations in maritime and continental waters of Catalonia

A letter from the Department of Climate Action, Food and Rural Agenda is presented to the Catalan Data Protection Authority, requesting that the Authority issue a report on the Draft Decree on fishing , fishing and aquaculture tourism and the fishing demonstrations in maritime and continental waters of Catalonia

The Draft Decree is structured in five articles, an additional provision, a repealing provision, and a final provision.

Having analyzed the Project, and the documentation of the file that has been consulted through the link provided by the Department, in view of the current applicable regulations and in accordance with the report of the Legal Counsel, it is reported that Next.

Background

Law 2/2010, of February 18, on fishing and maritime action, in article 5.f) establishes among its purposes to promote the economic diversification of the fishing sector and the fourth final provision states that the Government must promote the specific regulation of fishing and aquaculture tourism activities.

87/2012 , of 31 July, on fishing , fishing and aquaculture tourism and fishing demonstrations in maritime and continental waters of Catalonia, regulated, as complementary activities of the fishing sector, activities linked in whole or in part with maritime fishing and aquaculture that allow to improve or supplement the incomes of the people who make up the fishing sector, with the aim of achieving the economic diversification of the sector and the promotion of its products (article 1.1).

The entry into force of Royal Decree 239/2019, of April 5, which establishes the conditions for the development of fishing activities , and the experience gained since the approval of Decree 87/2012 , of 31 July, advise to introduce certain modifications and modify the validity of the authorizations for aquaculture tourism and of the Territorial Plan for the development of the activity of aquaculture tourism in Catalonia. Likewise, it advises establishing a model for monitoring and administrative control of activities and revising the procedure for granting authorizations.

Legal Foundations

I

(...)

II

The purpose of the Decree Project is to introduce certain modifications in the authorization regime for aquaculture tourism and in the Territorial Plan for the development of the activity of aquaculture tourism in Catalonia, to establish a model for monitoring and administrative control of the activities and review the procedure for granting authorizations.

This report is issued exclusively with regard to the assessment of the incidence that this project may have from the point of view of the protection of personal data, understood as all information about an identified or identifiable natural person . For these purposes, article 4.1 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD)) adds that *"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 several elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person"* .

In this sense, it should be remembered that the processing of the data of legal entities is not subject to the RGPD, as expressly provided in Recital 14: *" This Regulation does not regulate the processing of personal data relating to legal entities and in particular companies established as legal entities, including the number and form of the legal entity and its contact details"*.

Thus, any aspect that does not affect information relating to identified or identifiable natural persons is outside the scope of this report.

In this case, article 1 of the Project regulates the subjects who can carry out fishing activities , fishing and aquaculture tourism and fishing demonstrations and locations and modifies **article 4.1.b) and)** of the Decree.

Although the letters b) and ic) of article 4.1, which are modified, refer only to entities (therefore legal persons) the letter a) of article 4.1 of Decree 87/2012 refers to the persons holding of authorizations, concessions and licenses for fishing, aquaculture or shellfish . The personal data protection regulations will apply to these people.

On the other hand, it will also apply with respect to the data of the people who can act on behalf of the entities referred to in letters b) and c) of article 4.

Having said that, those provisions of the Draft Decree that have a particular impact on the fundamental right to the protection of personal data are examined below, the perspective from which this report is issued.

III

Article 2 of the Project that modifies **article 6.1** of Decree 87/2012 provides that *"For the exercise of fishing activities , fishing tourism and fishing demonstrations, it is necessary to present before the start of the activity a responsible declaration before the competent general management in matters of maritime policy and sustainable fishing (...)"*.

Article 3 of the Project that modifies **article 7.2** of Decree 87/2012 makes it clear that *"Aquacultural tourism activities are subject to prior authorization from the competent general management in matters of maritime policy and sustainable fishing."*

The Project specifies which data are requested in the responsible declaration (**article 6.2**) and in the request for prior authorization (**article 7.2**). Specifically, they must contain:

- a) The identification data of the person who wants to carry out the activity.
- b) The forecast of the activities to be developed and the technical means and resources.
- c) The identification data of the civil liability insurance policy in force that covers the possible personal damages of tourists during the exercise of the activity, in accordance with the provisions of article 8 of this Decree.

The treatment of this data, when it concerns natural persons, must comply with the provisions of the RGPD and Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD) and comply, among others, with the principles of purpose limitation (Article 5.1.b) RGPD) and data minimization (Article 5.1.c) RGPD). According to these principles, personal data must be collected for specific, explicit and legitimate purposes, their subsequent treatment not being possible in a way incompatible with these purposes (limitation of the purpose), and must be adequate, relevant and limited to what is necessary to achieve these until they justify their treatment (data minimization).

The provision of processing this data can be considered appropriate to the data protection regulations to the extent that it is specified in the personal data relating to the identification of the person who signs it (and, where appropriate, of his representative) and the necessary for to verify compliance with the required requirements, and its use is limited to what is necessary for processing the procedures and carrying out the administrative procedures determined in the Project.

However, apart from identifying data , it is also foreseeable that provision should be made for the collection of the contact data necessary for the exercise of public functions linked to the control of the activity.

identification and contact details of the persons who act as representatives of the details of the legal persons carrying out the activities regulated in the decree is also missing .

IV

Article 4 of the Project modifies article 11 of Decree 87/2012. Among other aspects, it incorporates the need to include in the Report that must be provided annually to the Department, the turnover or gross income obtained in the activity developed and the economic impact on the main activity.

It must be taken into account that when it comes to natural persons, providing this information on the income of the activity developed under the protection of the Decree and also of those linked to the main activity, is a clearly intrusive measure for the affected people, given that it can be a clear manifestation of their economic capacity.

Without prejudice to the fact that the requirement of this type of information may be justified in those cases in which the exercise of the powers attributed by law to the administration requires it (art. 6.1.e RGPD), it is not appreciated neither in the text of the Decree nor in the general report a justification of the need to have this type of information for the exercise of the powers attributed to the Department. For this reason, and by virtue of the principle of minimization (art. 5.1.c) RGPD), in the event that it is decided to maintain this provision, it would be necessary to clarify the public interest pursued with the collection of this information.

V

Apart from the aforementioned principles, it is also necessary to take into account article 5.1.f) of the RGPD, relating to the principle of integrity and confidentiality, which provides the following:

"Personal data will be treated in such a way as to guarantee adequate security of personal data, including protection against unauthorized or illegal processing and against its loss, destruction or accidental damage, through the application of appropriate technical and organizational measures. "

In accordance with this principle, appropriate technical and organizational measures must be implemented to guarantee a level of security appropriate to the risk involved in the processing of personal information provided for in the Project, taking into account the state of the art, the costs of application and the nature, scope, context and purposes of the treatment, as well as the risks of variable probability and severity for the rights and freedoms of the natural persons affected (Articles 24 and 32 RGPD).

Regarding the adoption of these measures, point out that the RGPD establishes a security model that is based on the need for a prior risk assessment by the person in charge to determine what are the risks that are objectively expected to be generated by the processing and, from there, determine and implement appropriate security measures to deal with it.

In this sense, the first Additional Provision of the LOPDGDD provides:

"1. The National Security Scheme will include the measures that must be implemented in the case of personal data processing, to avoid its loss, alteration or unauthorized access, adapting the criteria for determining the risk in the data processing to what is established in the article 32 of Regulation (EU) 2016/679.

2. The responsible persons listed in article 77.1 of this organic law must apply to the processing of personal data the security measures that correspond to those provided for in the National Security Scheme, as well as promote a degree of implementation of equivalent measures in the companies or foundations linked to them subject to private law.

In cases where a third party provides a service under a concession, management assignment or contract, the security measures will correspond to those of the public administration of origin and will be adjusted to the National Security Scheme.”

Therefore, it will be necessary to apply the security measures established in the National Security Scheme, approved by Royal Decree 311/2022, of May 3. in the treatment of the information referred to in the Project.

VI

Regarding the repealing provision that repeals the **additional provision and annex 2** of Decree 87/2012, specifically, the personal data file called "*Fishing-tourism activities, fishing and aquaculture tourism and fishing demonstrations* ", the project's general report, dated July 6, 2022, states that with the entry into force of the RGPD, the obligation to notify the registration of files disappears and "*the Register of Activities is created in its place of Treatment, which is why it is unnecessary to keep in force the additional provision of Decree 87/2012, of July 31, as the Registry of treatment activities of the Department of Climate Action, Food and Rural Agenda has published the inventory of activities associated with treatment activities derived from Decree 87/2012, of July 31.*"

In this sense, in accordance with the provisions of the data protection regulations, the express repeal of the Additional Provision and Annex 2 of Decree 87/2012, and the incorporation of its content into the Register of Activities, is positively valued of treatment of the department, given that this contributes to compliance with the RGPD and, in short, to legal certainty.

conclusion

the draft decree on fishing , fishing and aquaculture tourism and fishing demonstrations in maritime and continental waters of Catalonia could be considered adequate to the provisions established in the regulations on the protection of personal data, without prejudice to the considerations made in this report.

Barcelona, October 5, 2022