

Report in relation to the proposed modification of article 3 of Law 6/2007 of July 17, of the Center for Opinion Studies.

Background

A letter from the Department of Economy and Finance is submitted to the Catalan Data Protection Authority in which it is requested that the Authority issue a report on the proposal to amend article 3 of Law 6/2007 of 17 of July, from the Center for Opinion Studies , to be included in the Draft Law on fiscal and financial measures for the year 2023 .

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

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

Legal Foundations

I

(...)

II

The proposed provision presented in the report aims to modify article 3 of Law 6/2007 of July 17, on the Center for Opinion Studies , with the following wording:

"Article 3

Functions of the Center for Opinion Studies

The Center for Opinion Studies has the following functions:

- a) Prepare or supervise and control opinion studies and surveys that provide information on society's opinions regarding the geographical, economic, demographic, political and social reality of Catalonia; about their attitudes, habits, customs and preferences, including those that refer to circumstances relating to personal or family privacy, and about their opinions and intentions in ethical, moral, social, ideological, political or community matters.*
- b) Prepare, exclusively within the scope of the Administration of the Generalitat, opinion studies and electoral surveys that ask the population of Catalonia about the intention to vote or about the assessment of leaders and political parties, and also post-election studies.*
- c) Develop, promote and promote scientific research projects relevant to the study of society .*
- d) Collaborate with universities and research institutes to carry out research projects and the specialized training of social science researchers.*

e) *Provide advice and training, in relation to the technical criteria that must be followed when designing, developing and analyzing opinion studies of the Generalitat, to the departments of the Generalitat, to the bodies and entities that depend on them or are there linked, and also to any public or private legal entity that is ordinarily provided with more than fifty percent of subsidies and other income from the Administration of the Generalitat, or in which said administration participates in more than fifty percent of the capital or patrimonial fund or have the power to appoint the majority of members of the governing bodies.*

f) *Manage the Registry of Opinion Studies.*

g) *Disseminate the results of the Center's activity and other related academic work."*

Specifically, the modifications introduced with respect to the previous text of this article 3 refer to:

1. In section a) *"of the inhabitants of Catalonia" is replaced by "of society"; "the population of Catalonia" is incorporated ,*

3. Two more sections are included with the letters c), relating to *" Develop, promote and encourage scientific research projects of relevance to the study of society and id), with the text, " Collaborate with universities and research institutes for carrying out research projects and the specialized training of social science researchers."* . The current letters c), d) and e) would become letters e), f) and g).

The report on the impact assessment of the provision indicates that:

"The objective of the proposed modification is the intensification of the research activity of the CEO, and the strengthening of its links with the research system in social sciences in order to incorporate and develop and promote methodological and substantive expertise in the field of opinion studies and social sciences.

The aim is to enable the CEO to develop and participate in research projects in social sciences, promote and encourage research activity and the training of researchers in social sciences, and disseminate the results. We want to encourage the cooperation of the CEO with other agents of the Catalan research system relevant to their activity, who can contribute expertise and establish cooperation mechanisms for the development of projects and the use of data and research infrastructures " .

Therefore, the proposed modification leads to the expansion of the functions of the CEO in terms of the development, the impetus and the promotion of scientific research projects of relevance to the study of society as well as the collaboration with universities and research institutes for carrying out research projects.

To the extent that these new functions involve the processing of personal data for that purpose, it will be necessary to take into account 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 . (LOPDGDD) as follows from article 20.1 of Law 6/2007 of July 17, of the Center for Opinion Studies.

It should be taken into account that the RGPD (to which it is necessary to understand the reference made to article 20 of Law 6/2007), in regulating the principle of limitation of the purpose of the treatment (article 5 and Recital 50 RGPD), establishes that in accordance with article 89 of the RGPD are not considered incompatible with the initial purposes for

which the personal data were collected, the subsequent treatment of those for archival purposes in the public interest, scientific research and historical or statistical purposes (consideration 50 RGPD).

For this purpose, article 89 of the RGPD (Recital 156 RGPD) imposes on the data controller a series of guarantees for the processing of data for the aforementioned purposes. Among these measures, for example, it refers to minimization or pseudonymization, but other measures must also be taken into account, such as anonymization.

On the other hand, article 3 of the law already expressly provided for the treatment of certain special categories of data (political ideology and beliefs) with which it will also be necessary to take into account article 9.2.j) RGPD with regard to both the provision in a rule with the rank of law, as in the establishment of adequate guarantees (STC 76/2019). In this sense, the principles and the regime for obtaining information provided for in article 20 of the law can be considered adequate guarantees required by this article.

III

The incorporation in article 3 of new functions relating to "*promoting scientific research projects of relevance for the study of society* (letter c) and "*Collaborating with universities and research institutes to carry out projects of research and the specialized training of researchers in social sciences.*", would not pose problems from the point of view of personal data protection regulations as long as the aforementioned guarantees derived from the aforementioned article 5.1.b), 89 and 9.2.j) of the GDPR and the guarantees that derive from article 20 of the same Law 6/2007.

Article 20 of Law 6/2007 establishes the following:

"Principles of action and regime for obtaining information

- 1. The Center for Opinion Studies fulfills the functions that correspond to it in accordance with the principles of objectivity and neutrality in its action, and ensures, at all times, full respect for the rights of citizens, for the protection of the personal data obtained and the duty of secrecy, in accordance with Organic Law 15/1999, of December 13, on the protection of personal data.*
- 2. The studies prepared or promoted by the Center for Opinion Studies and the departments of the Generalitat must adhere to the following principles:*
 - a) Citizens' response to requests for information for opinion studies is always voluntary.*
 - b) Citizens can avail themselves of the right not to answer a certain question.*
- 3. Public employees and agents in charge of collecting information for opinion studies must read the following statement, aloud, to the people from whom they ask for information:*
 - a) The information we are asking for is for the preparation of an official opinion study.*
 - b) . The Administration or the personnel of the Administration who use this information are obliged by law to guarantee you anonymity and statistical secrecy, that is to say,*

not to disclose in any way the individual answers and not to use- them for any purpose other than the preparation of an official opinion study.

c) .You have the right not to answer all the questions.”

And it is precisely with respect to this article 20 that it would be appropriate to make three observations:

At the outset, it is made clear that this modification could be used to also adapt article 20.1 of Law 6/2007 of July 17, of the Center for Opinion Studies in order to update the reference to the current data protection regulations (RGPD and LOPDGDD).

On the other hand, according to section 3.b, the people from whom information is requested must be informed about the fact that "*the Administration or its staff who use this information are obliged by law to guarantee you anonymity and statistical secrecy, i.e. not to disclose individual responses in any way and not to use them for any purpose other than the preparation of an opinion study official "*

Point out that the conjunction "or" placed in the expression "*the Administration or the staff "* should be an "and", given that it is not a disjunctive but an obligation to which both the 'Administration and its staff.

Finally, it should be remembered, in relation to the provisions of article 20.3, that article 13 of the RGPD imposes certain information obligations that the data controller must provide when personal data is obtained directly from the person interested For this reason, and to offer greater clarity and legal certainty in relation to the applicable information obligations, it is recommended that, apart from the information that must be given explicitly under the provisions of article 20.3, s introduce in this article a reference to which this is "*without prejudice to the information obligations derived from the personal data protection regulations "*.

conclusion

Having examined the proposal to amend article 3 of Law 6/2007 of July 17, of the Center for Opinion Studies, to be included in the Draft Law on fiscal and financial measures for the year 2023, considers adequate to the provisions established in the regulations on the protection of personal data, without prejudice to the considerations made with respect to article 20 of the same legal text.

Barcelona, October 20, 2022