

Report in relation to the draft Law for the promotion, development and organization of the social and solidarity economy in Catalonia

Background

A letter from the Department of Business and Labor is presented to the Catalan Data Protection Authority in which it is requested that the Authority issue a report on the draft Law for the promotion, development and organization of the social economy and solidarity in Catalonia.

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

The draft Law whose purpose, in accordance with what is established in its article 1.1, "*to establish a common legal framework for the promotion, development and organization of the social and solidarity economy in Catalonia (...)*", is structure in six titles, with twenty-two articles, four additional provisions, two transitional provisions and three final provisions:

- Title I , relating to the provisions generals _
- Title II, relating to the organization and representation of the social and solidarity economy .
- Title III, on awareness and training measures .
- Title IV, relating to measures to promote the creation and strengthening of the social and solidarity economy .
- Title V, on measures to promote the social market , integration economic and the goods common _
- Title VI, on measures to promote innovation , impact assessment of social and solidarity economy , taxation , bonuses and financing .

Its scope of application is "*the set of entities of the social and solidarity economy that have their registered office in Catalonia and develop their activity mainly in Catalonia*", as established in article 2.1.

It should be noted that 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, meaning "any information about *an identified or identifiable natural person (the 'interested')*. *Any person whose identity 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 specific to the physical, physiological, genetic, psychological, economic, cultural or social identity of this person*" (Article 4.1 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of 27 April of 2016, General of Data Protection (hereafter, RGPD)). Therefore, any aspect that does not affect personal data is outside the scope of this report.

In this regard, it should be remembered that the processing of the data of legal entities is not subject to the RGPD, as specified by the RGPD itself, by establishing that *"the protection granted by the present Reglamento debe apply to people physical , regardless of its nationality or of place of residence, in relation to its treatment data personal _ This Regulation does not regulate data processing personal relating to persons legal and in particular companies constituted as people legal entities , including the number and form of the legal entity and above data from contact."* (Recital 14).

Consequently, the processing of data of social and solidarity economy entities that may derive from the application of the draft law would not be subject to data protection regulations. However, the data protection regulations would apply to the processing of the personal data of the people who act on behalf of these entities.

III

Article 9 of the draft law provides for the creation of a Register of the social and solidarity economy in which entities wishing to be recognized as a social and solidarity economy can be registered. Specifically, this article 9 establishes:

"Article 9.- Accreditation of the status of entity of the social and solidarity economy and Register of the social and solidarity economy

9.1. Entities that wish to be recognized, for the purposes of promotion, development and organization provided for in this Law, as a social and solidarity economy must go through a recognition process through the accreditation of compliance with the principles and values and requirements, according to the typology that wants to be registered, established in articles 4, 5, 6, 7 and 8 in its operation and in the manner of developing the activity, in the manner established by regulation.

9.2. A Register must be created in the organic unit competent in matters of social and solidarity economy, before which the entities that wish to obtain the qualification of entity of social and solidarity economy for the purposes of the promotion and encouragement measures that the Catalan administrations that adopt in favor of this type of economy must present, in the form determined by regulation, the corresponding application and the supporting documentation of compliance with the principles, values and requirements set out in articles 4, 5, 6, 7 and 8 that shape the identity of social and solidarity economy entities. The registration in this Register will be a requirement to be able to access the

promotion or encouragement measures that the Catalan administrations adopt in favor of the entities of the social and solidarity economy.

9.3. The Registry must be equipped with electronic systems that enable electronic processing, electronic advertising of content, access to electronic information by interested persons, the exploitation of its content and the possibility of consultation in 'other Catalan registers with registration competence in relation to social and solidarity economy entities.

9.4. In the case of the entities of article 3.2.a) in terms of compliance with the requirements set forth in this Law, it will only be necessary to provide the Register of the Social and Solidarity Economy with that documentation or information that is not included in the competent register for reason of the nature of the entity."

Regarding the application of this article, remember, with regard to the request referred to in section 2, which is expected to be specified by regulation, that to the extent that it involves the collection of personal data, it will be necessary to give compliance with data protection regulations regarding the right to information provided for in article 13 of the RGPD.

Section 3 of the same article 9 foresees that the Registry will be provided with " *electronic systems that make possible telematic processing, telematic advertising of content, access to telematic information by interested persons...* " .

This article does not specify what information from the register will be made public. In the event that the registration includes personal data, whether of the persons representing the entities, other related persons or other persons in general, it must be taken into account that in accordance with article 6.1.e) of the RGPD and the Article 8 of Organic Law 3/2018, of 5 December on the protection of personal data and guarantee of digital rights (LOPDGDD) the disclosure or communication should be provided for in a rule with the rank of Law. As we do not have at the time of making this report what the data to be collected in the register will be, it is not possible to make a statement on this issue. In any case, it is recommended to review this issue in order to collect, where appropriate, at a legal level the publicity of personal data that are strictly necessary to achieve the purpose of the registration, in accordance with the principle of data minimization (art. 5.1.c GDPR).

Likewise, remember that article 19 of the LOPDGDD considers the processing of the contact data of natural persons who provide services in a legal entity to be in contact lawful. Thus article 19 establishes the following:

"1. Unless proven otherwise, it will be presumed covered by the provisions of article 6.1.f) of Regulation (EU) 2016/679 the treatment of contact data and, where applicable, those relating to the function or position performed by people physical entities that provide services in a legal entity provided that the following are met requirements :

- a) That the treatment refers only to the data necessary for you location professional _*
- b) That the purpose of the treatment be only maintain relations of any kind with the legal entity in which the affected party borrows services _*

2. The same presumption will operate for the treatment of the data relating to employers individuals and professionals liberals , when they refer to them only in said condition and are not treated to establish a relationship with them as persons physics _

3. Those responsible or responsible for the treatment referred to in article 77.1 of this law organic they can too treat the data mentioned in the two sections previous ones when it derives from a legal obligation ie necessary for the exercise of sus competencies ."

Among the persons responsible for the treatment included in article 77.1 of the LOPDGDD, to which this article 19.3 of the LOPDGDD expressly refers, we find, among others, the Administration of the Generalitat.

It should be remembered that the treatment of this data must 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 purposes determined, explicit and legitimate, their subsequent treatment being not possible incompatible with these purposes (limitation of the purpose), and they must be adequate, relevant and limited to what is necessary to achieve these until they justify their processing (data minimization).

IV

Regarding the electronic systems for the management of the register, from the data protection aspect, the Department must take into account the provisions of article 15 of Law 29/2010, which establishes a series of criteria that must be taken into account when incorporating electronic media in the performance of the public sector, especially, *"the impact of the incorporation of electronic media on the security of documentation and information and data of a personal nature that they contain"* (section d).

Article 5.1.f) of the RGPD, relating to the principle of integrity and confidentiality, provides the following:

"The data personal they will be treated in such a way as to guarantee safety data adequacy _ personal data , including protection against treatment no authorized or illegal and against you accidental loss , destruction or damage , through application of measures technical or organizational appropriate ."

In accordance with this principle, it is necessary to implement appropriate technical and organizational measures to guarantee a level of security adequate to the risk involved in the processing of personal information provided for in the draft law, taking into account the state of the art, the application costs 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.

Remember that the application of these measures will be marked by the criteria established in the National Security Scheme, approved by Royal Decree 311/2022, of May 3.

conclusion

Having examined the Draft Law for the promotion, development and organization of the social and solidarity economy in Catalonia, it is considered adequate to the provisions established in the regulations on the protection of personal data.

Barcelona, December 22, 2022

Machine translation