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Autoritat Catalana de Protecció de Dades

Legal report on the Proposal to amend article 42 of Law 12/2007, of October 11, on social services, as well as the seventh additional provision of Law 2/2014, of January 27, of fiscal, administrative, financial and public sector measures.

Background

A written request for a report is submitted to the Catalan Data Protection Authority, with an urgent nature, in relation to the Proposal to amend article 42 of Law 12/2007, of 11 October , of social services, as well as the seventh additional provision of Law 2/2014.

According to the request, it is expected that the Proposal can be incorporated into the Draft Law on fiscal, financial, administrative and public sector measures, which is currently being processed.

Examined the Proposal, which is not accompanied by the General Report or the Impact Assessment Report, but only by the Report justifying the proposal, taking into account the current applicable regulations, and in accordance with report of the Legal Counsel, the following report is issued:

Legal Foundations

I

(...)

II

The Proposal submitted, to be incorporated into the Draft Law on fiscal, administrative, financial and public sector measures, which is currently being processed, has as its object the modification of two rules.

On the one hand, the content of article 42 of Law 12/2007, of 11 October, on social services (hereinafter LSS) is substantially modified, in the following terms:

> *"Section 3 bis:*
>
> *The competent Administration will make available to citizens a digital file system that allows those interested to access, at any time, their records and procedures and to receive them and store the electronic communications of the agents of the system who wish to communicate there. For the purposes of this access and for the communication of procedures and services subject to this Law, all citizens of legal age who receive social care will communicate, where appropriate, to the competent Administration an individual email address .*

All communications and actions intended for the agents of the system will be carried out by electronic means. For this purpose, the agents will have to communicate that they have an email box in order to receive possible communications and documentation from citizens. The deployment and operation of the folder and mailbox will be regulated by Order of the department competent in social services in accordance with the strategy and criteria for the deployment of the service of the private area of the electronic headquarters of the Administration of the Generalitat , established by the department responsible for public assistance.

Section 6 bis:

The private agents of the system, in accordance with the data protection regulations, to be able to interoperate with each other and access the data of individuals and households registered in the different parts of the public and private system, will adhere to codes of conduct registered with the Catalan Data Protection Authority that regulate the exchange of social data or other type of adhesion agreements to multilateral information exchange systems that guarantee the protection and confidentiality of data and their appropriate uses.

Section 6ter:

The Administration of the Generalitat makes available to users identification and electronic signature services for use in the services and procedures subject to this Law. The following identification and contact data will be deposited in the contact database of the Electronic Headquarters of the Government of the Generalitat to avoid errors and duplications and will be integrated with the Social Information System: CIP code of the Health Card Individual, IDALU student identifier. Likewise, all geolocation data of citizens' addresses, services and equipment must be made according to the official databases of the Cartographic and Geological Institute of Catalonia, as well as the housing identification codes of the cadastre. The CUPS codes for electricity and gas supply, and the water meter codes for all people's homes will be incorporated into the Social Information System
registered in the Social Information System, and which must be provided by the supplying companies."

Section 8:

The creation and operation of the Social Information System must be regulated through orders and instructions from the Department responsible for social services in accordance with the principles established in this article and in coordination with the departments responsible for digital administration and public attention

Section 9:

Governance Council of the Social Information System of Catalonia is created as a consultative body to ensure the conditions of interoperability of the Social Information System and the continuous improvement of the system. The Council will be made up of representatives of the departments of the Generalitat competent in social services, energy, food, health, care, education, housing, work, immigration, justice, digital administration and citizen care and digital society, as well as the Council of Ethics in the

social services of Catalonia, of the four councils, of the ACM, of the FMC, of the Barcelona city council, of the Third Sector Board, of the CTTI, of the APDCat , of the Consortium of the Open Administration of Catalonia, Localret and the TIC-Salut Social Foundation. The operation of the Council will be regulated by an Order of the Department competent in social services.

Section 10:

The ethics council in social services coordinates and collaborates with the Data Ethics Committee for the advice or support that is appropriate in aspects related to ethics in the advanced uses of data".

Section 11:

The Government of the Generalitat must use corporate solutions, without prejudice to the cases where, due to the sectoral specificity or the complexity of the data being managed, specific information systems or management platforms are available. In this case, they must guarantee interoperability with the technological solutions of the Administration of the Generalitat.

The creation and deployment of the specific digital systems and services provided for in this article will be carried out in accordance with the digital administration model of the Administration of the Generalitat, in coordination with the competent departments in digital administration and citizen attention, especially for regarding the provision of the proactive services of the social portfolio.

Section 12:

The Catalan public sector administrations competent in the actions provided for in this law will collaborate to make available to citizens the unified processing of the procedures provided for in this when these are owned by different administrations.

It enables the competent department in social services of the Government of the Generalitat to access the data provided by the holders of economic activities and facilitate them to the competent public administrations through unified processing.

In order to efficiently provide the social services provided for in this provision, the Center for Telecommunications and Information Technologies and the Open Administration Consortium of Catalonia must make available to the bodies of the Generalitat the technological solutions necessary to provide the services in accordance with the Catalan model of digital administration. These services will make the technological solutions necessary for the unified processing of social services available to the rest of the bodies and agents. In any case, the town councils can use technological solutions that the Open Administration Consortium of Catalonia and the councils make available or their own solutions, as long as they are interoperable with the Generalitat's information systems.

Section 13:

The data of the social information system will be integrated in accordance with the forecasts and criteria established in the data governance model of the Administration of the Generalitat and its institutional public sector."

On the other hand, the Proposal modifies the seventh Additional Provision of Law 2/2014, on fiscal, administrative, financial and public sector measures, specifically, it modifies section 1, and adds new sections 4 and 5:

"Section 1 would be drafted as follows:

The competent public administrations in matters of social protection are empowered to verify, ex officio and without the prior consent of the persons concerned, the data declared by the applicants for the benefits for which they are legally or by regulation competent and , if applicable, identifying data, administrative status of residence and kinship, disability, dependency status, employment status, educational results and qualifications, assets and public or private debts and public income and aid or private perceived and the burden of the debts of the members of the economic unit of coexistence, judicial with economic impact or on the home and the identification data of basic supplies, in order to verify whether the necessary conditions are met at all times for the perception of the benefits and the recognized amount, and with the aim of serving people in an integral way, addressing their social needs in a coordinated manner, and being able to measure the impact of the social intervention and guarantee the correct application of the public funds intended to prevent the improper or fraudulent obtaining or enjoyment of benefits and other benefits or financial aid that may be received by subjects participating in the System or who are beneficiaries. Likewise, the necessary agreements will be established with the health system so that the relevant social and health information of the people served by the social and health service systems can be shared within the framework of their own or shared competences.

A section 4 is added:

The department responsible for social rights will create a register of individuals interested in receiving information about the aid system and updates. This registration will incorporate e-mail and mobile phone number to receive through electronic messaging systems information personalized to your situation. Citizens of Catalonia who are not or have been users of social services under the terms of the previous points may register with the legal guarantees of data protection and confidentiality. The register may incorporate socio-economic information that citizens voluntarily wish to enter and those who authorize automated consultation to keep it updated. Citizens may unsubscribe from the register at any time and according to the terms provided by current data protection legislation at any time. The anonymized and aggregated information from the register may be used for statistical and research studies.

A section 5 is added:

The Government of the Generalitat must use corporate solutions to guarantee the availability, exchange and interoperability of data and information, without prejudice to the cases that, due to the sectoral specificity or the complexity of the data that are managed, specific information systems or management platforms are available. The Center for Telecommunications and Information Technologies and the Open Administration

Consortium of Catalonia must make available to the bodies of the Generalitat the technological solutions necessary to provide data exchange and interoperability services, in accordance with the model digital administration Catalan.

The creation and deployment of the specific digital systems and services for the interoperability of the data provided for in this provision will be carried out in accordance with the digital administration model of the Administration of the Generalitat, in coordination with the competent departments in administration digital."

From the perspective of the right to the protection of personal data, it must be taken into account that the processing of personal data is subject to the principles and guarantees of the data protection regulations, specifically, Regulation (EU) 2016 /679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (RGPD). It is also necessary to take into account the provisions of Organic Law 3/2018, of December 5, on Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD).

It should be borne in mind, as a starting point, that the configuration of the social information system (hereafter, SIS), which is included in article 42 of the LSS, subject to modification in the examined Proposal, entails the treatment of personal data of very diverse groups of people (including, in a special way, minors and groups of vulnerable people), and data of categories and types also very diverse, in large part, deserving of a special protection by data protection regulations (art. 9 RGPD).

In any case, the treatment (art. 4.2 RGPD) of personal information that may derive from the use of the SIS, including access, communications between agents involved in the provision of social services, must be subject to compliance with the principles and guarantees of the RGPD, as already follows from article 42.3 of the LSS, to which we refer.

III

In relation to the **provisions of the Proposal regarding article 42 LSS** , the following considerations must be made.

- Regarding the provision of the new **section 3.bis)** of article 42 LSS, at the outset, it seems that it is planned to set up a "digital folder" system, for the communication of information between citizens and " the competent administration", without further details, in relation to any procedure or service provided for in the LSS.

In connection with this, the new **section 6.ter)** of the Proposal provides that "the Administration of the Generalitat makes available to users the identification and electronic signature services for use in the services and procedures subject to this Law."

It should be noted, at the outset, that the regulations provide for the right of citizens to relate to the Administrations through electronic means (art. 13.a) Law 39/2015), but it does not seem that this communication system is can impose as the only one in the field that deals with us, if we take into account that, according to article 14.1 Law 39/2015:

"1. Individuals can choose at any time if they communicate with them

Public Administrations for the exercise of their rights and obligations through electronic media or not, unless they are obliged to relate through media electronic with the Public Administrations. The medium chosen by the person stops communicating with Public Administrations may be modified by that at any time."

In fact, the same Report that accompanies the Proposal (point 2), mentions the provision of Article 14.1 Law 39/2015, and Article 56 of Decree 76/2020, of August 4, on Digital Administration , in the sense that the possibility of using digital media is a right of citizens, but not the only channel of communication.

It should be added that the wording of section 3.bis), which we are examining (as provided for in the Proposal), leads to the understanding that the possible modification of the LSS would lead to the Administration's interaction with citizens must necessarily do so by electronic means.

And this could even force the provision of article 14.3 of Law 39/2015, according to which:

> " By regulation , the Administrations they can establish the obligation of relate to them through media electronics for certain procedures and para ciertos groups of people physics that by reason of su capacity economic , technique , dedication professional or others reasons stay accredited that they have access and media availability _ electronic necessary ."

It does not seem that the regulations can impose, precisely on certain vulnerable groups, served by social services, the obligation to relate to the Administration by electronic means. While it cannot be ruled out that this channel of communication may even be preferable in some cases (people served by social services without a fixed address, etc.), it does not seem that it can be required in general, at least, without providing alternative channels of communication with the administration.

Taking this into account, the approach of the Proposal is questionable, in the sense that communications and actions in the field of the LSS and the corresponding services must necessarily be through this route. More, taking into account the difficulties that this could entail in the field that deals with us, since the people affected, often, belong to vulnerable groups or who may have difficulties to articulate their interrelationships with the administration through of electronic media.

Beyond this, special emphasis must be placed, from the perspective of data protection, on the need to provide adequate compliance with the principles of data protection regulations, compliance which, as we move forward, this Authority does not consider that given in this case, given the content of the Proposal and given the information available at the time of issuing this report.

On this, it is necessary to start from the basis that according to article 5 of the RGPD:

"1. The personal data will be:

a) treated in a lawful, fair and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be subsequently treated in a manner incompatible with said purposes; in accordance with article 89, section 1, the further processing of personal data for archival purposes in the public interest, scientific and historical research purposes or statistical purposes will not be considered incompatible with the initial purposes ("limitation of the purpose") ;
c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated ("data minimization");
(...)."

As this Authority has done, among others, in Reports PD 4/2018, PD 6/2018, or PD 5/2020, access and treatment by the competent Public Administrations in matters of social services to personal information of people requesting benefits and aid, and, where appropriate, the members of their economic unit of coexistence, and, in general, it is data processing subject to the principles and guarantees of data protection regulations . The Proposal we are dealing with, given the information available, would involve data processing of all citizens who could be affected by the implementation of a digital folder system in the field of social services.

Considering the processing of data that could be derived from the Proposal, which could qualitatively and quantitatively affect a very high number of people, and some categories of data that, in the context we are dealing with, may be largely deserving of special protection (art. 9 RGPD), it is clear, as a starting point, that the Proposal should incorporate with particular care the requirements of the personal data protection regulations.

The RGPD establishes that all data processing must be lawful (art. 5.1.a) RGPD), and establishes a system for legitimizing data processing that is based on the requirement that one of the legal bases established in article 6 GDPR.

In the field of public administrations, and in the context that concerns us, the legal basis of article 6.1.e) RGPD could be used to treat certain categories of data, to the extent that the intended treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the Public Administration in question.

However, as can be seen from article 6.3 of the RGPD, the basis of the treatment indicated in
this article 6.1.e) of the RGPD must be established by European Union Law or by the law of the Member States that applies to the data controller.

Despite the fact that recital 41 of the RGPD provides that *"when the present Reglamento hace*
reference to a legal basis or a legislative measure, this does not necessarily require one legislative act adopted by a parliament", it should be noted that the same recital establishes that this is *"without prejudice to the requirements in accordance with the ordinance*
constitutional of the Member State in question".

The referral to the legitimate basis established in accordance with the internal law of the Member States to which
refers to article 6.3 of the RGPD requires, in the case of the Spanish State, that the rule of development, to be a fundamental right, has the status of law (Article 53 CE), such

as the Constitutional Court has recalled, for example, in STC 292/2000 (FJ 14).

The Proposal presented in the report seems to have the vocation to be the "legal basis" which should legitimize the processing of data in the context of the implementation of the SIS (art. 42 LSS), in terms of social services, specifically, the processing of this new "digital folder" referred to in the Proposal.

At this point it must be noted that the RGPD itself establishes the requirements to be met this "legal basis".

Thus, in accordance with the aforementioned article 6.3 *in fine :*

"The purpose of the treatment must be determined in said legal basis or, in the treatment referred to in section 1, letter e), will be necessary for him fulfillment of a mission carried out in the public interest or in the exercise of powers public given to the person in charge of the treatment. Said legal basis may contain specific provisions to adapt the application of the present rules Regulation, among others: the general conditions that govern the legality of the treatment by the person in charge; the types of data object of treatment; those interested affected; the entities to which personal data can be communicated and the purposes of such communication; the limitation of the purpose; the retention periods of the data, as well as operations and treatment procedures, including measures to guarantee legal and equitable treatment, like those related to others specific treatment situations pursuant to Chapter IX. Union Law or of the Member States will fulfill an objective of public interest and will be proportional to the legitimate end pursued."

And, in any case (and this is of particular interest in the case examined), this "legal basis" *" must be clear and precise and su application reviewable for sus addressees , in accordance with the jurisprudence of the Court of Justice of the European Union (...) and the European Court of Human Rights "* (consideration 41 in fine).

The European Court of Human Rights (hereafter ECtHR) has stated repeatedly that any limitation to the exercise of a fundamental right must pass the so-called "test of limits". In other words, it must be provided for in a law, it must be necessary in a society democratic to achieve a legitimate purpose and must be provided in relation to the purpose sought to be achieved in each case (SSTEDH Amann v. Switzerland, of 16.02.2000;
Rotaru c. Romania, from 4.05.2000; Cutlet c. Romania, from 3.06.2003; Liberty and others c. kingdom
United, of 1.10.2008, among others).

In this context, which has already been highlighted by this Authority when examining regulatory provisions relating to the area in question (provision of social services), it must be noted that the Proposal being examined does not allow us to clearly know what it would be the processing of data derived from the implementation of the digital folder referred to (section 3. bis Proposal), nor the specific purposes of the processing.

If we adhere to the provisions of the sector's own regulations (LSS and Decrees 142/2010 and 365/2022, regarding the Social Services Portfolio, which determines the set of services,

economic and technological of the Social Services Network of Public Care and is the instrument that ensures access to the guaranteed benefits of the population that needs them), it is clear that the processing of personal data in the context of the provision of social services, attending to the different types of people and groups affected, to the public administrations (and also the private agents of the system), involved, and to the different services that can be provided (basic and specialized services), it is qualitatively and quantitatively very important, so it is necessary to ensure transparency, clarity, and information to those affected regarding the processing of their data.

In this sense, we agree that the terms of the Proposal (in particular, the modifications foreseen for article 42 of the LSS), do not allow us to clearly know which information flows can occur, nor in relation to which services or benefits

Thus, for example, **section 3.bis)** of article 42, of the Proposal, refers to "competent administration" without further specification. Moreover, the Proposal also does not specify whether it would be administrations competent in matters of social services or others, so the lack of concreteness on this point is even more relevant, from the perspective of data protection .

Taking into account the provisions of the sectoral regulations (LSS and regulatory decrees of the portfolio of social services) there are several public administrations involved in the provision of social services, so it would be necessary to clarify which administrations, and to what extent, they will be able to access information of the SIS, treat it, communicate it, etc. The same consideration must be made regarding the "private agents" referred to, among others, in section 6.bis) of the Proposal, with respect to which it is also not defined what information they can access or process.

In relation to this, we must also refer to the new **section 6.ter** of article 42 of the Proposal, according to which different categories of data *"will be deposited in the database of contacts of the electronic Headquarters of the Administration of the Generalitat to avoid errors and duplications and which will be integrated with the Social Information System: (...)".*

Although the wording of this section is not clear, it seems that based on the provisions of the Proposal, it is intended that the SIS integrates a quantity of personal data (identifiers , CIP Code of the individual health card, identifier of the students (IDALU), " geolocation data of citizens' addresses" - forecast that it is also not clear what personal information could be referred to -, or electricity, gas and water supply codes), indistinctly, for any person who may be listed in the SIS, and without categorizing the information processed according to or in relation to the services or aid of which a certain person may be a beneficiary.

Given these forecasts, we conclude that the Proposal does not allow us to assess the extent of the treatment that could be carried out as a result of the Proposal. As this Authority has agreed on previous occasions, special care must be taken in the treatment of personal information about situations of vulnerability (as it may be in the field of social services), given the risk of stigmatization of the people affected.

Therefore, the treatment of the different categories of data referred to in the Proposal must respond to a legitimate purpose. As an example, depending on the processing that can be done of the information relating to the geolocation of homes - as the Proposal seems to

indicate - and the dissemination that is made, if applicable, an affectation could occur for certain groups of vulnerable people.

From the perspective of data protection and, specifically, from the perspective of the principle of purpose (art. 5.1.b) RGPD), as well as the principle of minimization (art. 5.1.c) RGPD), it is necessary to have bearing in mind that the data that can be collected and processed in the SIS and, where applicable, in a digital folder system referred to in the Proposal, must be those that are appropriate in each case. From this perspective, it might not be necessary or justified for the digital folder system to collect the same information for all cases, or in relation to any affected person, as seems to be derived from the provisions of the Proposal.

In this sense, we recall that this Authority has examined the treatment of the health card (identifier specific to the health system), in the context of the public system of social services (PD 5/2016 and PD 5/2016.bis), putting manifests that: *"(...) health and social services legislation can enable the communication of certain data without the consent of those affected, provided that the coordination between care services and social services so requires with respect to people served by both services who have received or are receiving a specific service that has some repercussion or impact on their medical care or when social services must access data from the medical history of certain people to intervene in situations of social risk. Equally in other cases, the exchange of information may be enabled by the express consent of the persons affected."* (FJ III)."

For the purposes that are now relevant, the processing of certain personal information (such as the health identification card, or the student ID, etc.), respond to specific purposes. The fact that this or other personal information can be used in the context that concerns us now (digital folder system in the framework of the provision of social services), will depend on the purpose of the treatment, taking into account the corresponding legal basis for each case

Having said that, for the purposes of this report, the provisions of the Proposal, in relation to the modification of article 42 LSS, do not allow the purpose of the treatment to be considered sufficiently clear, nor the need to treat the data it refers to justified the proposal, in relation to all the people affected, whose data could end up being processed in the digital folder system that is the subject of the Proposal.

- In connection with this, it is also worth noting that the development, concreteness and scope of these communications between citizens and public administrations in the field of SIS and, specifically, the development of the digital folder to which refers to the proposal, it should have a clear, appropriate regulatory development that allows citizens to know how their personal information will be treated.

Thus, it does not seem that this regulatory development can be carried out in the terms of the provision of what would be in new **section 8** of article 42 LSS, examined, according to which *"the creation and operation of the Social Information System is must regulate through orders and instructions from the Department of Social Services (...)."*

- Regarding the provision of the new **section 6.bis)** of article 42 LSS, according to which the "private agents of the system", to be able to " interoperate with each other" and access, it seems, all the data of the SIS, "they will adhere to codes of conduct registered with the

Catalan Data Protection Authority that regulate the exchange of data or other types of agreements of adhesion to multilateral information exchange systems (...). "

That is to say, it seems that the Proposal would enable generalized and indiscriminate access to any type of personal information in the SIS, by any agent who may intervene in the system at some point, due to the fact that these agents adhere to a code of conduct or other mechanisms that the Proposal does not clarify.

Apart from that, as this Authority has already done in the past, in relation to the processing of data in the social field (among others, in relation to the exchange of information between social and health services, in the 'Report PD 5/2020), the accesses, exchanges, and treatments of personal information, must have an adequate legal basis, must be justified, comply with the principle of purpose (in the terms we have already noted) , and also to the principle of minimization (art. 5.1.c) RGPD).

At the outset, as has been indicated, the data protection regulations would not enable indiscriminate access to all SIS information by any public or private agent intervening in the system, as could be understood to be provided for in the examined Proposal.

Based on this, it must be taken into account that in the case of private entities that can participate in the system adhere to a Code of Conduct, it does not in itself assume a substitute element for the corresponding legal basis or legal qualification (arts. 6 and, where applicable, 9 of the RGPD), to consider this access and processing of personal information as adjusted to the data protection regulations. In other words, adherence to a Code of Conduct (art. 40 RGPD) can help the participating entities in the correct compliance with the obligations derived from the data protection regulations, but it does not replace this compliance, nor the obligations imposed by the principles of the RGPD, among others, the principle of purpose or minimization.

For this reason, it is also not considered that the provision of section 6.bis), examined, meets the requirements of the data protection regulations.

- Nor is it sufficiently precise, for the purposes of data protection regulations, the provision of **paragraph 11** of article 42 of the LSS which, among others, refers to the provision of "proactive services of the social portfolio". Given the provisions of the LSS in relation to the structure of basic and specialized social services (arts. 15 et seq. LSS), it is not clear to which services the provision of section 11, mentioned, would be referring.

In line with what has been pointed out in this report, we agree that, for the purposes of the need to specify the purpose of the treatment, the purpose of the information flow (access to the data and communication to other administrations) is also not clear which are not specified), in **paragraph 12** of article 42 LSS of the Proposal, an issue that, in line with what has been pointed out, should be revised.

IV

In relation to the **provisions of the Proposal regarding the seventh Additional Provision of Law 2/2014** , (hereinafter, DA 7), and in connection with the considerations that have been made previously in this report, it is appropriate to make the following the next.

- At the outset, with regard to the provision of section 1 of DA 7, it is worth saying that this provision has been the subject of analysis on previous occasions by this Authority, among others, and the Reports PD 4/2018, or PD 6/2018, to which we refer.

Based on the considerations already made by this Authority, it should be noted, at the outset, that the text of the Proposal considerably expands personal information - in large part information from specially protected categories and vulnerable groups -, that the public administrations they would be able to treat, not only qualitatively, but quantitatively (considering the people who may be affected), and in addition to this, the information can be collected both directly from the interested persons and from third parties or entities.

Taking into account the report that accompanies the consultation, and that the Report of the proposal is not available, there is not enough information on the reasons that could justify the need to expand the personal information subject to treatment.

The proposal (DA 7, section 1), expands the information that could be collected and processed (information on employment status, educational results and qualifications, assets and public and private, judicial debts with an economic impact or on housing, and the data identifiers of basic supplies...), without this Authority having been able to have clear information regarding the need or justification for the treatment of all these categories of data that the proposal intends to treat.

To this it must be added that, in view of the information available, the new section 1 of DA 7, also raises substantial doubts linked to the purpose or purposes of the treatment.

At this point, it should be borne in mind that legal provisions and appropriate mechanisms should be established to ensure that in each case only personal information that is justified is treated, in the context of the SIS, and with respect to those people, their information which it is necessary to treat. It must be taken into account that not all people served by the social services system are served by the same benefits, obviously and, therefore, the information to be treated will not be the same either.

For example, it is clear that although in some cases dispose
of information of the affected persons, especially of special categories, may be justified, the breadth of social services (basic and specialized, according to the LSS), the personal information that may be justified to treat in one case, will not be in another.

In this sense, the information processed by the social services and, for the purposes that concern them, the information of the SIS, may not be information of special categories of data, but it may also affect various aspects, in some intimate cases, of the lives of the people and can allow you to get a profile of them.

In the light of the doctrine established by both the Constitutional Court (STC 76/2019) and the Court of Justice of the European Union (STJUE 8-4-2012 Digital Rights Ireland), this

new rule (in the case at hand, the studied Proposal, which has a substantial impact on the operation of the SIS), should meet the requirements of foreseeability or specification of the cases affected and also the necessary guarantees.

For all this, it would be advisable to clarify the regulatory provisions of the studied Proposal, due to the impact that the implementation of the digital folder system can have for data protection, and the risks derived from this treatment for other rights and freedoms that may be affected.

STC 76/2019 is particularly illustrative in this regard, which declared the unconstitutionality of article 58.1 LOREG, precisely because this article of the LOREG it provided for the treatment of special categories of data (in that case ideological data) without clearly establishing either the assumptions or the conditions under which the treatment could take place, and without providing adequate guarantees. In this sense, the Court makes it clear that it must be the law itself that establishes the guarantees, without them being able to refer to a later regulatory standard or to the decisions that can be taken by the data controller.

Not only that, but we remember the need to carry out an impact assessment related to data protection, in terms of the data protection regulations, to which we refer (art. 35 and considering 93 RGPD).

Having said that, it is worth saying that the current wording of DA 7 (wording given by article 163 of Law 5/2020, of April 29, on fiscal, financial, administrative and public sector measures and the creation of the tax on installations that affect the environment), foresees as the purpose of the processing of personal data, by the competent administrations, that of "checking whether the necessary conditions for the perception are met at all times of the benefits and in the recognized amount (...)."

Beyond this, which is already revised in the current DA 7 of the Law, cited, the Proposal adds what could be another purpose of the treatment, that is, "to measure the impact of the social intervention and guarantee the "correct application of public funds intended to avoid improper or fraudulent obtaining or enjoyment of benefits (...)."

The wording of DA 7, at this point, is not clear, since it seems that it is intended to expand the purposes of data processing, which would go beyond the mere verification of compliance with the requirements required in each case, to include, as it seems to follow from the Proposal, even a treatment with a punitive purpose, to prosecute fraud in obtaining aid and benefits, etc.

- Reference must also be made to the last paragraph of section 1 of DA 7, according to which:

> *"In the same way, the necessary agreements will be established with the health system so that the relevant social and health information of the people served by the social and health service systems can be shared within the framework of their own or shared competences."*

It should be noted that the sharing and interoperability of health and social services, in the area of Catalonia, and the challenges that this could generate from data protection

regulations, has been the subject of analysis by this Authority on previous occasions (reports PD 4/2018, PD 6/2018, PD 5/2020 or PD 10/2021, among others).

It is worth remembering, in this sense, that the data processing that may take place between social and health services, and the interrelationship between both services, must be determined by an appropriate legal basis (art. 6.3 RGPD), and by a correct compliance with the principles of purpose and minimization, mentioned.

Beyond the fact that the provision made regarding the sharing of information between health and social services, in the general terms of DA 7, is quite imprecise, we remember once again that the legal basis that provides for this treatment must be adequate for the purposes of the RGPD, in accordance with the jurisprudence of the CJEU and the ECtHR, in the sense that the legal basis must be clear and precise, as well as predictable for those affected.

In any case, and given the terms of the Proposal, the flow of information between health and social services, as can be seen from the aforementioned reports (to which we refer), must be established in legal rules with appropriate range (art. 6.3 RGPD, in connection, if applicable, with the legal basis of article 6.1.c) RGPD), and with sufficient concreteness and clarity.

Consequently, and for the purposes of this report, it does not seem that the final mention of paragraph 1 of the seventh additional provision, which we are commenting on, can be understood as a sufficient legal basis to allow the exchange of health and social data, that the proposal does not specify.

- With regard to the provision of what would be a new section 4 of DA 7, the creation of a register of individuals interested in receiving information on the "aid system and updates" is foreseen. It is foreseen in this section that this registration will incorporate the e-mail and mobile phone number to receive "information personalized to your situation".

While the mention in this section that the registration will have to be done "with the legal guarantees of data protection and confidentiality" is positively valued, it must be done considering that, from the perspective of the protection of personal data, it will be necessary to clarify the object and purpose of the registration, such as the categories of data that may be processed in said registration.

In this sense, it must be agreed that if the purpose of the registration is for citizens to receive information about possible aid that may be of interest to them, the information that they can provide should be the minimum essential so that they can be offered information about interest (art. 5.1.c) RGPD).

The Proposal foresees that interested persons can enter certain information ("socio-economic", according to the Proposal, without further specification), and also that those affected can authorize certain information to be consulted electronically. In any case, it would be useful to clarify what information could be entered into the register, who could have access to it, what communications could be made, etc.

It must be noted that the breadth and lack of concreteness of the information and the treatments that are planned to be carried out do not allow analyzing such important aspects as the possible elaboration of profiles of the people affected or the guarantees that the rule itself should contain.

Conclusion or

In view of the information available, the Proposal presented, to be incorporated into the Draft Law on fiscal, financial, administrative and public sector measures, cannot be considered adequate to the forecasts established in the corresponding regulations on the protection of personal data.

Barcelona, January 25, 2023