

File identification

Resolution of sanctioning procedure no. PS 15/2021, referring to the Department of Work, Social Affairs and Families of the Generalitat of Catalonia.

Background

1. On 05/15/2020, the Catalan Data Protection Authority received a letter from a person for which he made a complaint against the Department of Work, Social Affairs and Families of the Generalitat of Catalonia (in hereinafter, the TSF Department), due to an alleged breach of the regulations on the protection of personal data. Specifically, the complainant stated that through the website of the TSF Department (...) there were published the data of the people who had applied for aid for self-employed workers, natural persons, for the compensation of economic losses as a result of Covid-19, "which should be accessed by code."

In accordance with Decree-Law 7/2020, of March 17 (hereinafter, DL 7/2020), the single financial benefit for natural persons who are self-employed workers who prove a drastic and involuntary reduction in their turnover as a result of the effects of the coronavirus on their economic activity, and they did not have alternative income funds (art. 15.1), it was granted through the non-competitive competition procedure (art. 15.3).

2. The Authority opened a preliminary information phase (no. IP 139/2020), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts they were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.

3. In this information phase, on 05/19/2020 the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. Thus, the following was established, among others:

- That in the section of the website of the TSF Department referring to the aid granted to self-employed people financially affected by the coronavirus ((...)), the following information of the applicants was published: first and last name, NIF (items 4 to 7), whether the aid had been granted or refused, and the amount granted or the reason for refusal.
- That the published information referred to the granting of the aforementioned grants that had been resolved until 05/18/2020. The website indicated that "as more cases are resolved, the information will be added to the search engine."

- That on said website a search could be carried out using the name and surname of the beneficiary, the NIF (4 digits) or depending on whether the aid has been granted or denied.
- That in the case that aid had been granted, the amount was also indicated. On the contrary, yes the aid had been rejected, the reason for rejection was indicated.
- That at the time of the verification, the data of 9,201 people had been published, which did not include the data of the person making the complaint.
- That, through the electronic headquarters of the Generalitat de Catalunya ((...)), it was possible to consult the "list of beneficiaries of the first grant of aid for the self-employed (COVID-19)". The query led to the previously identified TSF Department website.
- That, through the notice board of the Generalitat de Catalunya, the Resolution of 22/04/2020 awarding grants for the call addressed to self-employed individuals, individuals, for compensation was accessed of economic losses as a result of Covid-19. As indicated on the board, the exhibition period was from 23/04/2020 to 21/05/2020 (both included). The interested persons were identified by their first and last name and 4 digits of the DNI or equivalent identification document.

4. On 06/04/2020, also during this preliminary information phase, the reported entity was required to inform, among others, whether the purpose of the publication on the Department's website and the publication of the decisions granting the aid on the notice board of the Generalitat de Catalunya was the notification of the decision to the interested persons or if it also had as its purpose the general knowledge on the part of the whole population; as well as on the specific legal basis that would legitimize the publication of the applicant's data through the notice board of the Generalitat de Catalunya and the Department's website.

5. On 06/16/2020, the TSF Department responded to the aforementioned request through a letter in which it stated, among others, the following:

- That in DL 7/2020 the forecasts in economic matters were defined (chapter VI) and an aid was established (art. 15), in the form of a single financial benefit, for a maximum amount of up to 2,000 euros, for the natural persons who were self-employed workers registered in the special scheme for self-employed workers of the Social Security.
- That in point 13 of Resolution TSF/806/2020, of April 2, which approved the call for aid for self-employed workers, natural persons, for the compensation of economic losses as consequence of the Covid-19 (hereafter, Resolution TSF/806/2020) it was indicated that once the applications have been reviewed, and after checking the access requirements, within one month, no had dictated and notified an express resolution, the request was understood to be dismissed due to administrative silence.
- That as indicated in the call, the decision to grant the aid was notified through its publication on the electronic board of the Administration of the Generalitat of Catalonia (<http://tauler.seu.cat/inici.do?idens=1>), notwithstanding that es

could additionally use other electronic means. This publication superseded the individual notice and had the same effect.

- That the approval resolutions published on the Notice Board state, for each beneficiary, the file number, 4 digits of the identity document, the name and surnames, the amount of the benefit. Resolutions were removed from the Notice Board after the exposure period.
- That the Department's website publication of the data of the people who had requested the aforementioned benefit, was an additional electronic means to the notification of the concession resolution through its publication on the electronic board. It was launched with the aim of providing a quick search tool to self-employed people who had applied for aid and needed to know the status of their file (9,500 applications were received).
- That the grants were awarded as the files were being resolved, which is why several resolutions related to this grant were published.
- That article 45.1.a) of the LPAC provides for the publication of administrative acts addressed to an indeterminate number of people.
- That the purpose of the publication of the resolutions granting the aid on the notice board of the Generalitat de Catalunya, which contain the data of the people who have requested it, was only the notification of the resolution to the interested persons, with the aim that the interested persons were aware that an administrative act had been issued that affected them and given the exceptional situation of a state of alarm.
- That the legal basis that would legitimize the publication of the data of the people applying for the aid through the notice board of the Generalitat de Catalunya was in the LPAC, for the purposes of achieving the purpose of notification in the yes of the concession procedure, which was foreseen in the call.
- That given the huge number of calls from people who did not know how to find or download the Resolution and, therefore, did not know whether they had been granted the aid, with the anxiety that this meant to them, a search engine was enabled on the Department's website where people could enter their first and last names and could find out if the benefit had been granted.
- That the publication of the search engine on the Department's website responded primarily to providing aid applicants with a new place to know the status of their processing, and at the same time served to achieve the purpose of advertising and transparency established in Law 19/2014, of December 29, on transparency, access to public information and good governance (hereinafter, LTC).
- That initially the name and surname were published in the search engine of the Department's web portal (to facilitate the search for applicants) and that later a weighting was made between the public interest in the disclosure of the information and the rights to the data protection of those affected, and the data published in the search engine corresponded only to the beneficiaries of the aid, and were as follows: file code, 4 digits of the person's identifier, initials of the bidding and amount of the benefit, preserving the identity of these people, and also achieving the purpose of transparency.

6. On 02/04/2021, also during this preliminary information phase, the Authority's Inspection Area verified that through the website of the TSF Department ((...)) the data of the people who were not beneficiaries of the aid were still published. In particular, it was verified through the search engine of said website that it was possible to access the data (initials of their first and last names, NIF/NIE -positions 4 to 7-, the inadmissibility of the aid and the reason) of the First 5 people to whom said aid was denied in the Resolution of 04/22/2020 (Annex 2).

7. On 04/03/2021, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the TSF Department for an alleged infringement provided for in article 83.5.a), in relation to articles 5.1 .a) and 6.1; all of them from 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 and the free movement thereof (hereinafter, RGPD). This initiation agreement was notified to the imputed entity on 09/03/2021.

8. On 03/25/2021, the TSF Department made objections to the initiation agreement.

9. On 04/16/2021, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the TSF Department as responsible for a violation provided for in article 83.5.a) in relation to articles 5.1.a) and 6.1, all of them of the RGPD.

This resolution proposal was notified on 04/16/2021 and a period of 10 days was granted to formulate allegations.

The deadline has passed and no objections have been submitted.

proven facts

The TSF Department published, through the Generalitat de Catalunya's edict board, the resolutions on the granting of aid to self-employed individuals, natural persons, for the compensation of economic losses as a result of the Covid-19 (call TSF/806/2020, of April 2), where the people who had been denied aid for a specific reason were identified, using their first and last names and 4 digits of their ID or equivalent

Additionally, this same information was also published on the website of the TSF Department ((...)). There, the non-beneficiaries were also identified through their first and last names and 4 digits of the DNI or equivalent.

From an undetermined date, but in any case after 05/19/2020 (and at least until 02/04/2021), the TSF Department kept published on the website just mentioned, the details of the people who were denied the aid. Specifically,

with respect to these people, the initials of their first and last names, positions 4 to 7 of their identification document, the inadmissibility of the aid and the reason were published.

Fundamentals of law

1. The provisions of the LPAC, and article 15 of Decree 278/1993, according to the provisions of DT 2a of Law 32/2010, of October 1, of the Catalan Data Protection Authority. In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2. The accused entity has not made allegations in the resolution proposal, but it did so in the initiation agreement. Regarding this, it is considered appropriate to reiterate below the most relevant part of the motivated response of the instructing person to these allegations.

2.1. About the exceptional circumstances.

In its statement of objections to the initiation agreement, the TSF Department stated that more than 9,500 applications were submitted to receive aid for the self-employed, natural person, for compensation of economic losses as a result of Covid-19. He added that it was communicated both in the resolution itself, and in other information published on the website Tràmits Gencat, that the interested person had 3 working days to prove his identity and bank ownership and that if he did not do so within the deadline established, he would be deemed to have waived his request. However, it indicated that the Department contacted this group that was pending the provision of documentation in order to remind them of this fact and explain in a close manner how they had to present this required documentation.

The TSF Department also added that the people in charge of solving the requests "we have also been affected by the extraordinary situation resulting from the health crisis situation generated by the COVID-19 and the state of alarm by RD 463/2020". Likewise, he pointed out that "despite being very aware of the regulations in force in the field of data protection, we have prioritized the fact of making it as easy as possible for self-employed people affected by a total closure of their businesses, and therefore in a situation exceptional, that they could be located within the resolutions as soon as possible, and if the provision of documentation was necessary."

In relation to these allegations, as explained by the investigating person in the resolution proposal, it should be noted that neither the exceptional or extraordinary circumstances invoked by the TSF Department, nor the declaration of the state of alarm, led to the suspension of the fundamental right to the protection of personal data.

In this way, the publication of the data relating to the non-beneficiaries of the aid mentioned, required the concurrence of a legal basis that legitimized this treatment. In

the present case did not meet any of the cases that provide for the publication of administrative acts in accordance with article 45 of the LPAC.

And in the specific case of subsidies and public aid granted, the transparency regulations only legitimize the publication of the identity of the beneficiaries (art. 15.1.c of Law 19/2014, of December 29, on transparency, access to public information and good governance - hereinafter, LTC-), but does not provide for the publication of the identity of non-beneficiaries. In similar terms, the sectoral regulations on subsidies are also pronounced (art. 20.2 of Law 38/2003, of 17 November, general subsidies - henceforth, LGS-).

2.2. About the measures taken.

Subsequently, the accused entity alleged that they had unpublished the search engine on their website; that the period of public display of the resolutions on the e-Board (electronic bulletin board) has already ended; that it was no longer possible to access the content of the resolutions on the Department's website (which linked to the notice board); and that the field was listed as "NOT PUBLISHABLE" in the Register of Grants and Aid (RAISC).

"Identification of the identity of the beneficiaries in accordance with LO 1/1982", and therefore, that the data of natural persons were not published in the RAISC.

Well, it is necessary to point out that the adoption of measures to correct the effects of infringements on one's own initiative, does not distort the facts imputed as an infringement, nor does it change its legal classification.

Having said that, the circumstances and actions set out by the Department in its statement of objections to the initiation agreement (which are certified, with respect to the non-beneficiaries of the aid referred to), do entail that it becomes unnecessary to propose that measures be adopted to correct the effects of the infringement.

3. In relation to the facts described in the proven facts section, it is necessary to go to the principle of legality. Article 5.1.a) of the RGPD regulates the principle of legality determining that the data will be "treated in a lawful manner (...)".

For its part, article 6.1 of the RGPD provides for the following:

"1. The treatment will only be lawful if at least one of the following conditions is met:

- a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures;

- c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment;
- d) the treatment is necessary to protect the vital interests of the interested party or another natural person;
- e) the 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 person responsible for the treatment;
- f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.

The provisions in letter f) of the first paragraph shall not apply to the processing carried out by public authorities in the exercise of their functions."

In relation to the publication of administrative acts, article 45.1 of the LPAC establishes the following:

"1. The administrative acts must be published when the regulatory rules of each procedure establish it or when it is recommended by reasons of public interest appreciated by the competent body.

In any case, administrative acts must be published, and this has the effects of notification in the following cases:

- a) When the act is addressed to an indeterminate plurality of people or when the Administration considers that the notification made to a single interested party is insufficient to guarantee the notification to all, and in the latter case it is additional to the one made individually.
- b) When it comes to acts that are part of a selective procedure or competitive competition of any kind. In this case, the call for the procedure must indicate the medium in which the successive publications will be carried out, and those carried out in different places are not valid."

As has been advanced, none of the assumptions that provide for the publication of administrative acts are met, given that neither the resolution in question was addressed to an indeterminate plurality of people nor was it a competitive competition procedure.

Likewise, article 46 of the LPAC regarding the notifications and publications of acts that may injure rights or legitimate interests, determines that:

"If the competent body considers that the notification through announcements or the publication of an act infringes rights or legitimate interests, it must limit itself to publishing in the corresponding official newspaper a succinct indication of the content of the act and of the place where the interested parties can appear, in the term that

is established, to know the full content of the aforementioned act and to record this knowledge.

Additionally, and on an optional basis, the administrations can establish other complementary forms of notification through the rest of the media, which do not exclude the obligation to publish in the corresponding official newspaper."

In turn, additional provision 7a of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD) establishes that "When it comes to notification by means of advertisements, particularly in the cases referred to in article 44 of Law 39/2015, of October 1, on the common administrative procedure of public administrations, the affected party must be identified exclusively through the number full copy of your national identity document, alien identity number, passport or an equivalent document. (...)"

For its part, article 15.1.c) of the LTC determines that, in the subsidized activity, the following information must be published:

"1. The information relating to subsidies and public aid that the obliged entities must make public in application of the principle of transparency must include:

(...)

c) Subsidies and public aid granted, with an indication of the amount, the purpose and the beneficiaries. This information must include grants and aid, must be up-to-date and must refer to the last five years.

It must also include subsidies and grants awarded without advertising and competition if these requirements have been exempted, in the cases established by law. In the case of subsidies and public aid granted for reasons of social vulnerability, the identity of the beneficiaries must be preserved."

Therefore, this precept only legitimizes the publication of the data of the beneficiaries of the aid for transparency purposes, but does not provide for the identification of the non-beneficiaries.

In similar terms, article 20.2 of the LGS, regarding the National Subsidy Database (BDNS), establishes that:

"2. The database must collect information from the grants; the inclusion of other aid can be established by regulation when its registration contributes to the purposes of the database, to compliance with the requirements of the European Union or to the coordination of international cooperation policies and other public promotion policies.

The content of the database must include, at least, reference to the regulatory bases of the grant, call, program and credit

budget to which they are imputed, the object or purpose of the subsidy, the identification of the beneficiaries, the amount of the subsidies actually granted and received, the repayment decisions and the penalties imposed. (...)"

During the processing of this procedure, the facts described in the proven facts section have been duly proven, which are constitutive of the violation provided for in article 83.5.a) of the RGPD, which typifies the violation of "the basic principles of treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9", among which is the principle of legality.

The conduct addressed here has been included as a very serious infraction in article 72.1.b) of the LOPDGDD, in the following form:

"b) The processing of personal data without any of the conditions for legality of the processing established by Article 6 of Regulation (EU) 2016/679."

4. Article 77.2 LOPDGDD provides that, in the case of infractions committed by those in charge or in charge listed in art. 77.1 LOPDGDD, the competent data protection authority:

"(...) must issue a resolution that sanctions them with a warning. The resolution must also establish the measures to be adopted so that the conduct ceases or the effects of the offense committed are corrected.

The resolution must be notified to the person in charge or in charge of the treatment, to the body to which it depends hierarchically, if applicable, and to those affected who have the status of interested party, if applicable."

In terms similar to the LOPDGDD, article 21.2 of Law 32/2010, determines the following:

"2. In the case of violations committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the violation and establishing the measures to be taken to correct its effects . In addition, it can propose, where appropriate, the initiation of disciplinary actions in accordance with what is established by current legislation on the disciplinary regime for personnel in the service of public administrations. This resolution must be notified to the person responsible for the file or the treatment, to the person in charge of the treatment, if applicable, to the body to which they depend and to the affected persons, if any".

As indicated by the instructing person in the resolution proposal, in the present case no corrective measures should be required, given that it is proven that the TSF Department already

does not keep published any data on the people who are not beneficiaries of the aid for the self-employed, natural person, for the compensation of economic losses as a result of the Covid-19.

For all this, I resolve:

1. Admonish the Department of Work, Social Affairs and Families of the Generalitat of Catalonia as responsible for an infringement provided for in article 83.5.a) in relation to articles 5.1.a) and 6.1, all of them of the RGPD

It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 4th legal basis.

2. Notify this resolution to the TSF Department.

3. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

4. Order that this resolution be published on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, and 14.3 of Decree 48/2003, of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority Data, within one month from the day after its notification, in accordance with what they provide

article 123 et seq. of the LPAC. You can also directly file an administrative contentious appeal before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating the administrative contentious jurisdiction.

If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended in the terms provided for in article 90.3 of the LPAC.

Likewise, the imputed entity can file any other appeal it deems appropriate to defend its interests.

The director,