

N/REF: 0060/2021

The query refers to the request received by the National Commission for Markets and Competition, from the Government Delegation Against Gender Violence of the Secretariat for Equality and Against Gender Violence of the Ministry of Equality, through which it is requested that the mobile and fixed telephone numbers of a sample of women to be able to carry out the European Survey on Violence by telephone of Gender that is part of the current National Statistical Plan.

In this sense, the Ministry of Equality motivates its request in the current pandemic scenario, stating that it would need, possibly, carry out the surveys by telephone due to the material impossibility of carry them out in person derived from circumstances such as provincial and interprovincial travel limitations, the possible refusal to enter homes or the need to guarantee distances of security.

Likewise, the report of your Data Protection Delegate is attached in which it exposes the main characteristics of the EEOG, the legal bases that would support the communication of the data and collects a series of aspects related to the security measures adopted.

Finally, the Ministry of Equality adds that the telephone interview It will only be carried out if the pandemic makes it strictly necessary and if the personal interview response rate is low, although it adds that the phone numbers will also be used for interview encouragement online or to make an appointment for the interview face-to-face, clarifying that the telephone numbers of those

subscribers who have made use of their right of opposition to appear in the phone listings.

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This consultation raises, once again, the possible communication of personal data to the telephone numbers of subscribers to the service telephone number, which are held by the CNMV for a purpose determined, in order that they be treated with a different purpose for facilitate the carrying out of surveys included in the National Statistical Plan, taking into account the limitations derived from the current pandemic scenario.

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On this issue, which has been reiterated since the beginning of the pandemic, this Agency has had the opportunity to speak out on numerous occasions, establishing as a general principle, when assessing the source of such communication, not the fact that the survey was is included in the National Statistical Plan and is carried out obligatory for the Administration, but that of voluntariness or compulsory in the completion of the survey by those affected.

In this sense, in our last report, referring to a request from the Center for Sociological Research, whose specific regulations include the principle of voluntariness of the answers, this analysis is carefully analyzed situation and the different pronouncements of this Agency are collected according to the indicated criteria:

This Agency has had occasion to pronounce itself on repeated occasions on the same object of the query raised again, in relation to the communication to the CIS of the telephone numbers that are in possession of the CNMC.

In this regard, it should be noted that, given the situation resulting from the current situation caused by the COVID-19 coronavirus pandemic and the restrictions derived from the declaration of the state of alarm by the Real Decree 463/2020, of March 14, and given the need expressed by the CIS of having to replace household surveys and carry them out by telephone to carry out its monthly Barometers and other specific surveys, this Agency ruled in Report 31/2020, of April 7, regarding the possible transfer to the CIS, by the National Institute of Statistics (INE) of the fixed and mobile phones of the population selected in the samples for execute the functions attributed to the CIS, and in report 35/2020, of 27 April, regarding the communication by the CNMC to the CIS of landlines and mobiles of the selected population in the nominative samples that are prepared for the CIS by the INE, requesting, in both cases, a greater information in order to determine the adequacy of such communications of data to the regulations on protection of personal data.

Subsequently, and given the need expressed by this Agency for adopt additional guarantees for the protection of the personal data of the affected, and after a meeting with representatives of the CIS in order to collaborate in the correct identification of said guarantees, a question was new consultation collecting what was agreed at said meeting, in which proposed the possible assignment to the CIS, by the National Commission of

Markets and Competition (CNMC) of telephone number listings by province for the exclusive purpose of conducting pre-electoral surveys Basque and Galician Among the additional guarantees, it was specified that said telephone numbers would not be associated with any other identifying data,

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referring exclusively to the corresponding province, and not would include the numbers of those people who have made use of their right of opposition to appear in the lists of telephones.

Said consultation was reported favorably by this Agency in the Report 49/2020, which due to its importance, is transcribed below:

I

As this Agency has repeatedly pointed out in successive reports issued during the state of alarm, said statement does not implies the suspension of the fundamental right to data protection, without prejudice to the fact that it may be affected as a consequence of the causal event that has given rise to the declaration, foreseeing the RGPD the appropriate channels that allow us to respond to the situation of a health crisis, respecting the fundamental right to protection of personal information. Therefore, any data processing personal data that must be carried out as a consequence of the pandemic and the declaration of the state of alarm must respect the right fundamental to the protection of personal data, adjusting to the

provisions of the RGPD, which allows, as we have seen, to establish specific rules regarding the exercise of said right, adjusted to the GDPR itself, as well as the doctrine developed by the Court Constitutional when interpreting article 18.4 of our Constitution, particularly with regard to the principle of proportionality.

Starting from the foregoing, and taking into account the strict terms of the query, and referring to the communication of the numbers telephone numbers available to the CNMC, it must be analyzed, previously, the legal basis under which the CNMC can proceed to the treatment of the personal data of the subscribers to the services of electronic communications, as well as the specific purpose for the that such data is collected and processed.

In this sense, as has been repeatedly pointed out by this Agency, the legal obligation to allow the provision of the service of telephone directory under conditions of effective competition and the specific transfer of data that it entails, stems from the provided in articles 25 and 49 of the current Law 9/2014, of 9 May, Telecommunications General -LGT-.

In this way, in relation to the fulfillment of said obligation, Article 25.1 c) of the LGT, within the regulation of the service world, remember that:

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“Under the aforementioned concept of universal service, must guarantee, under the terms and conditions that through royal decree are determined by the Government (...) It is put to availability of subscribers to the telephone service available to public a general guide to subscriber numbers, either printed or electronic, or both, that is updated, at a minimum, once a year. By royal decree, the subscriber groups that can request to be delivered the printed guide. Also, make it available to all end users of such service, including users of public pay phones, at least one information service general on subscriber numbers”, adding that “All the subscribers to the telephone service available to the public will have right to appear in the aforementioned general guide, without prejudice, in In any case, respect for the rules that regulate the protection of personal data and the right to privacy.

The guarantee of the fundamental right to personal data protection personal character appears expressly recognized among the objectives and principles of Law 9/2014, of May 9, by establishing within the same article 3 j):

“Defend the interests of users, ensuring their right of access to electronic communications services in adequate conditions of choice, price and good quality, promoting the ability of end users to access and distribute the information or use the applications and services of your choice, in particular through open access to

Internet. In providing these services, they must safeguard the constitutional imperatives not to discrimination, respect for the rights to honor and privacy, the protection of youth and children, the protection of personal data and secrecy in communications”.

Regarding the regulation of telephone directories, the Article 49.1 of the LGT establishes that:

“The elaboration and commercialization of the guides of subscribers to electronic communications services and the provision of information services about them will be carried out under free competition”.

Likewise, article 48.3 establishes that:

Regarding the protection of personal data and the privacy in relation to the directories of subscribers, users

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end of electronic communications services will have the following rights: a) To appear in the subscriber guides. b) To be informed free of charge of the inclusion of their data in the guides, as well as their purpose, prior to to said inclusion. c) To not appear in the guides or to request the omission of some of your data, to the extent that such data

are relevant to the purpose of the guide that you have stipulated your provider."

Regarding the duty to supply information for the free competition provision of directory publishing services telephone calls or making telephone consultations, add your own article 49.1 of Law 9/2014 that:

"For this purpose, the companies that assign numbers of telephone to the subscribers will have to give course to all the reasonable requests to supply relevant information for the provision of information services on numbers subscribers and guides accessible to the public, in a format approved and in equitable, objective conditions, oriented based on costs and non-discriminatory, being subject to the provision of said information and its subsequent use to the regulations on data protection in force in each moment".

For this reason, as this Agency has been reiterating in different legal reports -by all, the N° 0008/2020, of April 2 of 2020-, "(...) the legislator comes to specify expressly, in a norm with the rank of Law, the possibility that, in a development subsequent regulation, the operators are required to contribute the data necessary to fully comply with the rights/duties that he himself consecrates in the Law itself."

Consequently, in the general context - to which the exercise of its powers- the communication of the data to the National Commission of Markets and Competition finds its



based on the legal obligation to guarantee free competition in the market. For its part, the legal basis legitimizing the treatment of the data thus obtained by the assignees of this information is in accordance with the legitimate interest of these when they intend to provide the telephone directory service on subscriber or information numbers on subscriber numbers under conditions of free competition.

Within this specific regulatory framework, the successive communications of information with personal data are covered, in the regime in force since May 25, 2018, in the

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sections c) and f) of article 6.1 of said Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016 -GDPR and must comply with the regulations that regulate them: the Real Decree 424/2005, of April 15, approving the Regulation on the conditions for the provision of communications services electronic communications, universal service and protection of users, Order CTE/711/2002, of March 26, which establishes the conditions for providing the telephone consultation service on subscriber numbers and the Circular of the National Commission of Markets and Competition 1/2013, regarding the procedure for provision of subscriber data for the provision of services guides, telephone consultation on subscriber numbers and emergencies,

modified by Circular 5/2014, of July 30.

In particular, the provisions of the second

paragraph of article 68.2 of Royal Decree 424/2005, which in development

of the right that subscribers have not to appear in the guides or to

request the omission of some of your data, provided as we have seen

in article 48.3 of the LGT, it states that:

“The data referring to subscribers who have exercised

your right not to appear in directories accessible to the public

will only be provided to the entities holding the

emergency call service. To these effects,

It will be understood that the emergency call services are

those provided through the number 112 and those others that

determined by the Secretary of State for Telecommunications and for

the society of the information".

II

As can be seen, in the present case it is requesting

the communication of personal data for a purpose other than

which had been obtained. As it is a data communication

between administrative agencies, it must be, in the first place, along

provided for in its specific regulations, based on the configuration of the

CIS as an "autonomous body of an administrative nature, with

legal personality and its own assets, whose purpose is the

scientific study of Spanish society", as provided in article 1

of Law 39/1995, of December 19, on the Organization of the Center for

Sociological Research, whose article 2 adds that "The Center for

Sociological Research will develop its functions in accordance with

the principles of objectivity and neutrality in their actions, of equality  
access to your data and respect for the rights of citizens and  
to statistical secrecy.

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Article 5 includes the principles of action and the regime

law of survey research, including

that of voluntariness and that of protection of personal data:

The studies that the Center for Sociological Research

carried out using the survey method will abide by the

following principles:

a) Voluntary responses, especially when

inquire about ethnic, political, religious or

ideological, as well as circumstances that refer to the

personal or family privacy.

b) Investigative transparency, informing the

respondents regarding the body conducting the study and the

nature and purpose of it, as well as the guarantees that

assist in relation to the protection of your identity and privacy.

c) Specialty, using the information for the

purposes of the research and always within the

statutory objectives of the Center.

d) Protection of personal data, adopting in

any phase of the investigation process, and after the same, the necessary measures to guarantee the right to privacy and intimacy of individuals and families.

The functions provided for in this article that are carried out both by entities and by interviewers or coordinators of the Center's field network, will be considered included in article 196.3 e) of the Law of Contracts of Public Administrations, and will be governed by said Law.

In particular, in relation to the electoral polls to which consultation refers, the second additional provision refers to what provided for in Organic Law 5/1985, of June 19, on the Regime General Election:

Second additional provision. Performance in periods electoral.

During electoral periods, the Research Center Sociological will adjust its performance to what is determined by the Electoral administration in accordance with Organic Law 5/1985, of June 19, and, in particular, it will only be able to publish the polls or surveys carried out under the terms provided in article 69 of the aforementioned Organic Law.

On the other hand, the CIS invokes the obligation of collaboration contained in article 10.3 of Law 12/1989, of May 9, of the Public Statistical Function:

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Article 10.

3. The same obligation is incumbent on all institutions and

public entities of the State Administration, the

Autonomous Communities and Local Corporations.

When it is necessary to carry out statistics

the use of data from administrative sources,

the bodies, authorities and officials in charge of their

custody will provide the fastest and most agile collaboration to the

statistical services.

In accordance with the Explanatory Memorandum of said legal text "It is

stresses, however, the importance for statistical purposes of

use of data already collected by other offices or dependencies

administrative as a result of their ordinary activity, which allows, for

other hand, a considerable saving of means and avoids going back to

informants to collect data that is already in the possession of the

Administration for other purposes.

However, the communication of such data, when it comes to

personal data, is subject to the provisions of the regulations

on the protection of personal data and the principles

collected in article 5 of the RGPD, which requires analyzing, first

Secondly, if the intended communication is a proportional measure,

suitable for the intended purpose.

For these purposes, it must be assumed that the requested data is not

are for the purpose of statistical treatment, but as a means of contact

with the people who are going to participate in the survey, being the data that they facilitate those that will be the object of the corresponding statistical operations.

Therefore, they would be relevant for the intended purposes.

in article 12 of Law 12/1989, that is, in order to articulate the way to get the information:

Article 12.

1. The information will always be requested directly from the appropriate persons or entities, either by mail, visit staff of duly accredited agents or any other way that ensures direct communication of those with the statistical services or their agents.

2. The required information may be provided in writing, by magnetic media or using other methods

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that allow their computer treatment, always in accordance with the provisions of the rules that regulate each statistic in particular.

3. Expenses incurred by informants for shipments and communications to which the compilation of statistics gives rise for state purposes, they will be paid from the budgets of statistical services.

Said precept expressly refers to two ways of obtaining the information, by mail or by personal visit, for which purpose it would be enough to know the domicile of the interested party, being enough, to these effects, obtaining the information contained in the Register municipal and expressly provided for in article 16.3 LBRL. But without that it be extrapolated, without further ado, the legitimacy to treat the data of the address to the treatment of the data of the fixed telephone number and the telephone mobile, since this last data can be much more intrusive in the right to personal data protection. At this point, taking into Note that the text itself provides for the possibility of carrying out statistics by mail, the impossibility or inefficiency thereof, or where appropriate, through other means technological that do not require the treatment of the telephone number, to assess the proportionality of the requested assignment.

To this end, the CIS has stated the following:

“In this way, it has been raised as a possibility for the carrying out the surveys the use of telephone means.

This way of carrying out surveys and studies is the most suitable for cases in which the face-to-face option is not possible, but also in a society context of the information such as the current one, ways should be explored in that sense, to be able to make traditional surveys compatible with other more modern forms and according to current times. other way would be telematics, however, it must be abandoned as consequence of not allowing access to some samples acceptable values of the population, since it includes an economic bias and

very relevant age. On the other hand, there are currently no developed mechanisms that can allow a survey to be carried out through a computer, without contact, can reach the same levels of validity as one conducted by a professional and expert interviewer, either in person or through phone call.

Another alternative is the mail, however, in addition to being applicable the last defects that were pointed out with respect to telematics entails higher costs and implications in logistics that are not assumable. On the other hand, one would not have

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control over who agrees to take the survey and who do not, until a long time has elapsed, with which they do not the sample could be adapted according to the refusals.

Likewise, there would be no formulas to control the time in which the survey is answered nor that there may not be external influences that prevent responding naturally and direct”.

Consequently, taking into account the urgency arising from the call of the electoral processes, the problems to adjust in time the survey in the case of being carried out by mail and the bias that would occur in the case of using the Internet, the CIS justifies, as the only



possible alternative, the use of telephone means, understanding this Agency that, in the specific case that is the subject of this query, and starting from the impossibility, at least as long as it results from the declaration of the state of alarm, to carry out consultations face-to-face, conducting the surveys by telephone is provided, provided that in obtaining the telephone numbers additional guarantees are adopted to guarantee the protection of the fundamental right to the protection of personal data.

When determining these guarantees, two things must be taken into account:

singular circumstances that concur in this case:

In the first place, that the participation in the surveys carried out the CIS is always voluntary, as stated in article 5 a) of Law 39/1995, of December 19, previously cited: "Voluntariness of the answers, especially when inquiring about issues ethnic, political, religious or ideological, as well as circumstances that refer to personal or family intimacy".

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Second, given the administrative nature of the

CIS, as an Autonomous Body, it must be taken into account that,

in accordance with Law 39/2015, of October 1, of Law 39/2015, of October 1, October,

the

Public Administrations, the ordinary mode of communication with the managed is the address provided by them or the one that can obtain by the Registry Administration in the procedures initiated

ex officio (article 41.4), without the companies being obliged to provide your telephone number among the information that is necessarily must contain the request in the procedures initiated at the request of the same (article 66). Therefore, there is no legal obligation of those administered to provide their telephone number to the Administration, which can only be dealt with when it has been provided voluntarily by them and for the strict purpose for which they were have facilitated. Therefore, it cannot be considered to fall within the

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expectations of the interested parties that the Administration contact the themselves by phone.

At this point, as we have seen, there is only one assumption of legal obligation of communication of telephone numbers by of the operators to an administrative body, the CNMC, for the purposes indicated in this report, and recognizing as a right of the interested parties "not to appear in the guides or to request the omission of some of your data, to the extent that such data is relevant for the purpose of the guide stipulated by your provider" (Article 48.3 of Law 9/2014). In these cases, as stipulated in article 68.2 of the Royal Decree 424/2005 "The data referring to subscribers who have exercised their right not to appear in the guides accessible to the will only be provided to the entities holding the

emergency call service. For these purposes, it understand that the emergency call services are the provided through number 112 and those others determined by the Secretary of State for Telecommunications and for the Society of Information".

Based on the above, the CIS proposal includes some guarantees that are considered fundamental:

In the first place, only the data corresponding to the mobile phone number and the province to which it corresponds, without provide any other identifying information.

Second, they will not be included in the list provided by the CNMC the telephone numbers of those people who have exercised their right not to appear in the guides accessible to the public.

On the other hand, not all the data will be processed. telephone numbers of subscribers in the province, but only the percentage that is considered adequate to guarantee that it adjusts to the corresponding sample, a percentage that, depending on the Community Autonomous, would range between 5.1% and 6.3% of its population, to be distributed proportionally by province, according to its population, which will be selected randomly.

Thus, in the opinion of this Agency, the communication of the data of subscribers to the telephone service by the CNMC to the CIS for conducting electoral polls would find its based on article 6.1.e) of the RGPD ("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 data controller")

and is consistent with the principles of purpose limitation and minimization of data of its article 5, as well as the doctrine of our

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Constitutional Court, collected among others, in its Judgment 17/2013, of January 31, contrary to massive and indiscriminate access to data in the cases of transfers of data between Public administrations.

Likewise, since it is foreseen that the telephones obtained will only be kept for the time necessary to carry out the work field and, where appropriate, during the time necessary to carry out subsequent quality control, up to a maximum of thirty days, proceeding subsequently to its elimination, would be fulfilling with the principle of limitation of the term of conservation.

Likewise, the rest of the guarantees of the exercise of the statistical function, such as submission to secrecy statistical analysis or the dissociation of the data from the moment in which conducts the survey, separating the answers given by the respondents of the telephone numbers, as well as the rest of the measures appropriate technical and organizational measures to guarantee respect for the rights and freedoms of those affected and the adequacy of the treatment to the regulations on protection of personal data that corresponds adopt the CIS as data controller, in accordance with the

proactive responsibility principle.

At this point, it does not correspond to this legal report

carry out a detailed analysis of said measures, whose assessment

corresponds, as has been said, to the data controller. No

However, taking into account what was stated by the consultant herself,

It should be noted that, since the participation of a company is planned for the

carrying out the surveys, supplying the corresponding

computer program, in the event that it has access to

somehow to the personal data will hold the condition of

in charge of the treatment, having to sign an order contract

of the treatment with the content provided for in article 28.3 of the RGPD. Y

regarding information regarding the processing of personal data

that will be provided verbally to those who participate in the

surveys, it must include the basic information provided for in the

article 11.2 of the LOPDGDD for the "first layer", indicating a

electronic address or other means that allows easy access

and immediate to the rest of the information.

Therefore, this Agency considers adjusted to the

regulations on protection of personal data communication

by the CNMC to the CIS, of the necessary telephone numbers

to carry out the surveys corresponding to the

electoral processes to be held in Galicia and the Basque Country, in the

terms indicated in this report.

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Lastly, considering the urgency with which the request for the this report, given the proximity of the electoral processes to the that the query refers to, which would require adopting measures exceptional, it must be avoided, in any case, that said measures exceptions may, without further ado, become generalized once said period, and given the possibility of using other alternative measures, such as already indicated in Report 36/2020, a criterion of prudence that allows a calm analysis of its implications and, in In any case, and with regard to the powers of this Agency, a rigorous study of the risks to the rights and freedoms that these treatments imply and of the necessary guarantees to protect the right to the protection of personal data, taking into account the principle proactive responsibility.

For this reason, taking into account the principle of prudence already pointed out, as well as stated by the consultant regarding the Annual Program 2020 of the National Statistical Plan 2017-2020, whose section 28 recommends the promotion of multi-channel data collection in surveys homes through electronic and telephone means, taking into account account the evolution of society in the use of the Internet and the effectiveness telephone data collection, this Agency considers it necessary that, in the event that the generalization of the surveys to through electronic and telephone means, promote the corresponding legislative modification that guarantees the security

legal and the adequacy of the corresponding data processing to the RGPD and the doctrine of the Constitutional Court, through the establishment of the specific guarantees that are considered adequate.

Subsequently, this same criterion has been reiterated in the reports 75/2020 and 78/2020, referring to the communication of telephone numbers by part of the CNMC to the statistical services of different organizations for the conducting surveys included in the National Statistical Plan, highlighting that the relevant criterion in order to determine the way in which it will proceed said communication does not derive from the obligation to carry out the survey by the corresponding public body, but in the mandatory of its completion by those affected, and that by not attending the surveys carried out by the CIS, additional guarantees must be adopted.

This is what we said in Report 78/2020:

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The consultation, which is accompanied by the report issued by the data protection delegate of the ministry, raises the need to that, in order to carry out the 2020 Sports Habits Survey, sent by the National Commission of Markets and Competition (CNMC) the telephone numbers of the people selected in the sample of the survey carried out by the National Institute of Statistics (INE).

The query justifies its request in the fact that it is a statistic of mandatory completion, invoking in this regard the stated by this Agency in its Report 70/2015, and that as consequence of the social and health situation caused by the pandemic of the coronavirus COVID-19 and the restrictions derived from the measures adopted by the autonomous communities in matters of public health, It is not possible to do them in person.

Likewise, it is specified that the telephone number is part of the information requested in the survey questionnaire as instrument for quality control of the steps taken, that its use would be limited exclusively to carrying out field work of the Survey, so that it would not be subject to additional treatment, proceeding to its destruction once given the approval of quality to the report made, guaranteeing, likewise, the confidentiality of the treatment as it is subject to statistical secrecy by Law 12/1989, of 9 of May, of the Public Statistical Function.

The query refers to the preparation of official statistics, mandatory, included in the National Statistical Plan and executed by the statistical services of the State, for the realization of which is necessary, given the restrictions derived from the COVID-19 pandemic, pre-obtain phone numbers of those surveyed by the CNMC, which implies, as indicated in the Report of this Agency 49/2020 the communication of some personal data for a purpose other than that for which they were obtained. As it is a communication of data between organizations administrative, it must be, in the first place, what is foreseen in its



specific regulations, constituted, in the present case, by the Law 12/1989, of May 9, of the Public Statistical Function, whose article 23 includes, within the State Statistical Services, in addition to the INE and the Superior Council of Statistics, to “the units of the different ministerial departments and any other public entities dependent on it to which it has been entrusted that function”, attributing in its article 33 to the statistical services of ministerial departments, among others competences, in its letter f), "The elaboration and execution of the statistical projects entrusted to them in the Statistical Plan National".

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On the other hand, the aforementioned law, in its article 7.1. points out that "It shall establish by law the statistics for the preparation of which are required mandatory data" collected in the additional provision fourth of Law 4/1990, of June 29, on General Budgets of the State for 1990 the mandatory completion statistics between which the second additional provision of Law 13/1996, of 30 of December, of Fiscal, Administrative and Social Order Measures included “Statistics that are part of the National Statistical Plan and specifically according to article 45.2 of Law 12/1989, of 9 May, of the Public Statistical Function, those whose realization

is mandatory for the Spanish State due to the requirements of the regulations of the European Union. Likewise, the statistics that could be made under article 8.3 of the aforementioned Law”.

Likewise, and in what refers to the adequacy of the same to the provided for in the General Data Protection Regulation, article 25 of Organic Law 3/2018, of December 5, on Data Protection

Personal and guarantee of digital rights states the following:

Article 25. Processing of data in the scope of the function public statistics.

1. The processing of personal data carried out by bodies that have powers related to the exercise of the public statistical function will submit to the provisions of its specific legislation, as well as in Regulation (EU) 2016/679 and in this organic law.
2. The communication of the data to the organs competent in statistical matters will only be understood as protected in article 6.1 e) of Regulation (EU) 2016/679 in cases in which the statistic for which the information is required comes required by a rule of European Union law or be included in the programming instruments legally provided statistics.

In accordance with the provisions of article 11.2 of the Law 12/1989, of May 9, on the Public Statistical Function, will be strictly voluntary contribution and, consequently, may only be collected with the express consent of the affected the data referred to in articles 9 and 10 of the

Regulation (EU) 2016/679.

3. The competent bodies for the exercise of the public statistical function may deny requests for exercise by those affected of the rights established in the articles 15 to 22 of Regulation (EU) 2016/679 when the data are protected by the guarantees of secrecy statistics provided for in state or regional legislation.

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Therefore, in accordance with the provisions of the regulations specifically, it turns out that, in the present case, we are faced with the assumption of a mandatory completion statistic as it is included in the National Statistical Plan approved by Royal Decree 410/2016, of October 31, appearing among the information that must be Provide, as indicated in the query, the telephone number as instrument for quality control of the procedures carried out, so that "This variable becomes, therefore, not only a instrument of initial contact with the informant, but it is also part of the content of the questionnaire.

And since it is a mandatory completion statistic, there is a legal obligation of citizens previously selected in the survey sample to provide the information requested, typifying in article 50 of Law 12/1989 as

minor infraction "The referral or delay in sending data when it is not has caused serious damage to the service, and there is an obligation to supply them", as a serious infraction "The non-remission or the delay in the sending the required data when there is serious damage to the service, and there is an obligation to supply them" and as a very serious "The notorious resistance, habitual or with the allegation of false excuses in sending the required data, when there is an obligation to supply them."

It is precisely the obligation to complete the the survey that allows us to differentiate this assumption from those others in which it is voluntary, such as those carried out by the Center for Sociological Research, since, by involving the treatment of special categories of data, article 5 of the Law 39/1995, of December 19, on the Organization of the Center for Sociological Research collects the principle of voluntariness of the answers, which requires that, in the case of claiming the communication of telephone numbers by the CNMC to the CIS, additional guarantees should be adopted, as discussed in Report 49/2020.

Therefore, in the present case, the communication of the data of subscribers to the telephone service by the CNMC for the elaboration of an official statistic, of obligatory completion, included in the National Statistical Plan and executed by the services statistics of the State would find its basis in article 6.1.e) of the RGPD ("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 data controller”).

In any case, it must be fulfilled by the person in charge of the treatment with the principles established in article 5 of the RGD,

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pointing out in the consultation that the use of these telephones would be limited

exclusively to carry out the field work of the

Survey, so that it would not be subject to further treatment,

adapting to the principles of purpose limitation and

minimization of data and that the principle of limitation of the term of

conservation would also be guaranteed by destroying the numbers of

provided telephone number, once the quality approval has been given to the report

accomplished.

Likewise, the rest of the guarantees of the

exercise of the statistical function, such as submission to secrecy

statistical analysis or the dissociation of the data from the moment in which

conducts the survey, separating the answers given by the

respondents of the telephone numbers, as well as the rest of the measures

appropriate technical and organizational measures to guarantee respect for the

rights and freedoms of those affected and the adequacy of the treatment to

the regulations on protection of personal data that corresponds

adopt the Ministry of Culture as responsible for the treatment,

in accordance with the principle of proactive responsibility.

For all these reasons, this Agency understands that the communication of the telephone numbers by the CNMC to the statistical services of the Ministry of Culture, in the terms provided in this report, is protected by the RGD as long as, as already indicated in Report 70/2015, the data is only used for the realization of the statistics in whose field it is requested.

All this without prejudice to the fact that, basing the consultation on the restrictions derived from the COVID-19 pandemic and as advanced in Report 49/2020, being recommended in the section 28 of the 2020 Annual Program of the 2017-2020 National Statistical Plan, the promotion of multi-channel collection in household surveys through of electronic and telephone means taking into account the evolution of society in the use of the Internet and the effectiveness of the collection telephone data, this Agency considers it necessary that, in the case of that the generalization of the surveys be foreseen through electronic and telephone, promote the corresponding modification legislation that guarantees legal certainty and the adequacy of the corresponding processing of personal data to the RGD and to the doctrine of the Constitutional Court, through the establishment of the specific guarantees deemed appropriate.

For all these reasons, this Agency reiterates the criteria set forth, so that in order for the communication of the telephone numbers of the

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subscribers that are in the power of the CNMC to the CIS, guarantees must be adopted additional, similar to those provided for in report 49/2020.

Likewise, this Agency insists on the need, already indicated in the previous reports, that the corresponding modification be promoted legislation that guarantees legal certainty and the adequacy of the corresponding processing of personal data to the RGPD and the doctrine of Constitutional Court, through the establishment of guarantees specific as deemed appropriate.

II

In the present case, as results from the report issued by the DPD, the survey involves the processing of personal data included within the special categories of data and that, in any case, will only be provided voluntarily.

This voluntariness results from the provisions of article 11.2 of the Law 12/1989, of May 9, of the Public Statistical Function, which states that "In any case, they will be strictly voluntary contributions and, consequently, They may only be collected with the express consent of the interested parties. data likely to reveal ethnic origin, political opinions, religious or ideological convictions and, in general, how many circumstances may affect personal or family privacy.

Therefore, as it is a completion survey voluntarily by those affected, so that the communication of the numbers telephone numbers of the subscribers that are in the possession of the CNMC to the CIS must adopt additional guarantees, in addition to the generic ones derived from the regulations on the Public Statistical Function, including statistical secrecy, as well

as well as the European Statistics Code of Good Practice.

In this regard, from the report of the DPO and from the consultation letter itself, these additional guarantees would consist of the limitation of the sample, so that the sample of telephone numbers does not reach 6% of the population during the initial period of obtaining the sample; in the realization of strict controls of anonymization and dissociation of data, so that the special categories of data will be kept in a file segregated from the telephone file and other identification data from the moment of the survey, so it will be practically impossible to associate these data with their owner and will be safely deleted once they are no longer needed for the same, or for subsequent quality control work without allowing no other use. Likewise, it is specifically foreseen that the numbers of those people who have made use of their right to opposition to appear in the phone lists, this should be understood guarantee in the sense that they will not be provided by the CNMC.

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However, and without prejudice to its assessment by the person responsible for the treatment in accordance with the principle of proactive responsibility, although the additional guarantees indicated could be considered sufficient, however, The need for the communication of personal data is not proven corresponding to the telephone numbers by the Ministry of



Equality.

In this sense, the submitted documentation refers to said need hypothetically, noting that "In the current situation of pandemic the DGVG may need to conduct these surveys by telephone given the material impossibility of carrying them out in person...". What's more, provides for the use of other means, including conducting the survey by Internet (CAWI), pointed out, for this assumption, that "it is also planned carry out telephone incentives, since it is essential to be able to achieve adequate response rate by this method.

And, consequently, with this hypothetical nature and in order to justify necessity, adds that "The telephone interview will only be carried out if the pandemic makes it strictly necessary or if the response rate of personal interview is low".

Taking into account that the need for data processing, in the In this case, the communication by the CNMC of the telephone numbers must attend at the time it is proceeded to, this Agency considers that only said communication will proceed, with the guarantees previously indicated, if it is duly accredited that the pandemic does strictly necessary due to the impossibility of carrying out the surveys face-to-face or if, as a consequence of the pandemic, the response rate of personal interview is low.

On the other hand, this Agency considers it necessary to reiterate, once again, the need to proceed to a legislative amendment that guarantees the legal certainty and the adequacy of the corresponding data processing personal data to carry out telephone surveys to the RGPD and to the doctrine of the Constitutional Court, through the establishment of the

specific guarantees deemed appropriate, as we have already had the opportunity to propose in our Report 46/2021, referring to the Preliminary draft of the General Telecommunications Law.

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