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The consultation raises how to materialize the right to information provided for in the Articles 13 and 14 of Regulation 2016/679 of the European Parliament and of the Council, of April 27, 2016, regarding the protection of natural persons with regard to to the processing of personal data and the free circulation of these data (RGPD), in relation to the processing of personal data derived from the Ministerial Order TEC/544/2019, of April 25, which establishes and regulates the unified registry on certificates and training centers for fluorinated gases, on the basis that said state registry must be communicated the information available to the autonomous communities (CCAA) in accordance with the provisions of the Royal Decree 115/2017, of February 17, which regulates the marketing and handling of fluorinated gases and equipment based on them, as well as the certification of the professionals who use them.

For what must be taken into account, according to the consultant or the CAM in successively, certain aspects:

a) The information available to the Autonomous Communities is a consequence of their certifying activity for professionals who market and handle fluorinated gases and equipment based on them, (under the protection of the repealed Royal Decree 795/2010, of June 16, and of the aforementioned Royal Decree 115/2017 of February) so they handle two kinds of data, those provided with the certification request, and therefore provided by those interested, and those "generated" as a result of the certification, and therefore, not contributed directly by those affected and derived from the latter, considers the consultant, that the exception could be applied provided for in article 14.5 b) of the RGPD.

b) The obligation to communicate the information available to the

CCAA to the unified state registry created by the aforementioned ministerial order

TEC/544/2019, and attached to the Spanish Office for Climate Change

(OECC) is subsequent to the collection of the personal data of which

the Autonomous Communities have, that is, it is a supervening circumstance that,

a priori, it was not contemplated in the initial treatment and therefore

reported this possibility.

c) The purpose of the unified state registry is, among others, that any

citizen can consult it and, therefore, the personal data of the

certified professionals are accessible to third parties through the following

link on the website of the Ministry for the Ecological Transition and the

Demographic Challenge: https://www.miteco.gob.es/app/gasfluorweb/

d) The volume of data to be transferred and the obligation to inform the

interested. There is a large number of possible interested

certified by the Community since 2010, until 2019 when

included in the authorization application form for the use of

fluorinated gases the indication that your data may be consulted

by any citizen. It is a group to report of the order of 18,000

people, that given the age of the data, due to the time elapsed

since 2010, could make the intended individual communication unfeasible,

when there have been changes of address, or having only the

address of the work center, as well as for lack of data from both

mobile phone numbers (mainly landlines), which

have also been able to vary over time, such as email addresses

electronically, among other obstructive circumstances.

Taking into account the above, it is considered whether it is possible to apply to the consultant what

indicated in article 14.5 b) of the RGPD and establish as an alternative measure to

inform, the publication of this "new treatment" on the website of the aforementioned

regional public administration, since the consultant considers that the publication

through official bulletins may not have the desired effectiveness.

I

A question of a general nature is extracted from the consultation, referring to how it affects the

right to information provided for in articles 13 and 14 of the RGPD, the circumstance

that an initially planned data processing with certain characteristics and

specific purposes is affected by the entry into force of a rule that

modifies the initial conditions of the treatment.

Indeed, the data processing derived from the repealed Royal Decree

795/2010, of June 16, and the one that replaced it, Royal Decree 115/2017 of February,

provided for registration in the Ownership Register of the designated competent body

by the Autonomous Community, of those certifications of professionals who

they use fluorinated gases and equipment based on them.

Thus, article 4 regulates the certifying activity and determines that the CCAA for

said activity will designate a competent body and in article 7.1 attributes to the

CCAA the power to attribute to a competent body the management of, among others, the

certificate registration.

Article 4. Personal certifications.

1. The personal certifications listed in Annex I are the documents

by means of which the Administration recognizes the holder's capacity to

carry out the activities in them designated in accordance with the previous article.

2. Personal certifications will be valid throughout the Kingdom of Spain and

in the European Union as established in Regulation (EU) No. 517/2014

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of the European Parliament and of the Council, of April 16, 2014, on gases

fluorinated greenhouse gases and repealing Regulation (EC) No.

842/2006.

3. The autonomous communities will designate the competent body, which must

be impartial, for the issuance, suspension and withdrawal of certifications

personal.

4. The different personal certifications will be granted by said body

authority, on an individual basis, to all natural persons who request it

and that prove, in accordance with article 5, compliance with the

corresponding conditions indicated in Annex I.

5. Each personal certification will be issued according to the established format

in annex III and registered in accordance with article 7.

Article 7. Registration and unique access

1. The autonomous communities shall designate a competent impartial body in

the performance of its activities for the maintenance of the following

records:

a) Record of certificates issued together with the cases related in the

article 6.2 and 6.3.

With the entry into force of Ministerial Order TEC/544/2019, of April 25, by the

that constitutes and regulates the unified registry on certificates and centers of

formation of fluorinated gases, it establishes the obligation of a new treatment

on those data included in the autonomous registry mentioned above, consisting of the

communication of such information to the state unified registry. Specifically, it is indicated

in its Statement of Motives that:

The purpose of this order, therefore, is the constitution and regulation

administration of the Unified Registry on certificates and training centers

of fluorinated gases, located in the Ministry for the Ecological Transition and in

which will collaborate the autonomous communities that have to send the

information that constitutes its content.

And it establishes in its Article 2 under the name Unified Registry on certificates

and centers for the formation of fluorinated gases. Legal nature, scope of application and

content, in its section 4 the following:

4. Said registry will be nourished periodically and through computerized means of

the updated records of the autonomous communities that contain the

information mentioned in the previous section, constituted under the

provided in article 7.1 of Royal Decree 115/2017, of February 17. In the

terms established in its sole transitory provision, will be incorporated

also the certificates issued under Royal Decree 795/2010, of

June 16, which regulates the marketing and handling of gases

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fluorides and equipment based on them, as well as the certification of

professionals who use them.

The autonomous communities will previously inform the professionals

certificates that the essential personal data relating to them

may be consulted by any citizen in this unified Registry.

To which must be added what is indicated in its sole transitory provision on the

Existing certifications according to which,

The certificates of professionals and companies, as well as the authorizations to

training and evaluation centers, which would have been issued in accordance with the

provided in Royal Decree 795/2010, of June 16, and in Royal Decree

115/2017, of February 17, prior to the date of entry into force of

this order, they will be integrated into the Unified Registry on certificates and centers

formation of fluorinated gases.

It is obvious that, materially speaking, we are facing a new treatment that was not previously

existed, that is, before the data used -and generated- related to the

professional qualification remained in the registry of the CCAA granting the

itself, and now, after Order TEC/544/2019, of April 25, it turns out that said data

are communicated to a third party, to the OECC and are registered in a new registry -Registry

Unified - and can be consulted through the internet by any citizen or

company (a circumstance that already happened prior to the aforementioned Order.) Therefore,

Therefore, there will be a new assignee, the person in charge of the unified registry, and although

foreseen this situation, the third party that

try to consult this record.

II

Raised the terms of the consultation, it is necessary to clarify in advance, that when

The person responsible for the regional registry does not apply what is indicated in article 14

of the RGPD, since said precept refers to those cases in which the

Data is not provided by the owner, but rather reaches the data controller through

a third.

Article 14 whose denomination is “Information that must be provided when the

personal data has not been obtained from the interested party” indicates:

1. When the personal data has not been obtained from the interested party, the

responsible for the treatment will provide you with the following information

Likewise, it must be indicated that said precept will not be applicable when it is the

The person responsible is the one who generates them as a result of his activity. Consequently, his

application will be given when it is a third party -unrelated to the interested party and the person in charge- who

communicates the data to the person in charge for its treatment.

This clarification is important since the CAM, according to the consultation,

seems to understand that to the extent that the data that is communicated to the registry

unified are not strictly speaking, only those provided by the interested party, but are

they add the results of its certifying activity (registration number, key number,

date of granting, classification) article 14 RGPD would apply.

In the present case, the "information generated" after the certification, in terms

comparisons with the "provided by the interested party", it is only the Key, the number of

certification and date of issue. These will be the data that has not been provided by the

interested to the person in charge, but nevertheless they do not reach him through a

third party alien to him, but it is the responsible person who has created them.

Indeed, the fact that some data is not provided directly by the interested party, does not means, always and in any case, that they have been provided by a third party outside the responsible for the treatment (which implies the application of article 14 RGPD), but that what happens in the present case is that the new information is created by said responsible for the treatment, according to the specific purpose for which they have been collected the personal data and for whose treatment is legitimized and of which must have been informed in a timely manner in accordance with article 13.

Therefore, in relation to the data processing carried out by the General Directorate of Industry, Energy and Mines (DIGEM hereinafter) must indicate that it is responsible for the information regime provided for in article 13 of the RGPD and not in article 14.

III

From article 13 of the RGPD called “Information that must be provided when the personal data is obtained from the interested party" the following should be highlighted:

1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the moment in which these are obtained, will provide all the information indicated below:

a) the identity and contact details of the controller and, where appropriate, of his representative;(…)

c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;(…)

e) the recipients or categories of recipients of the data personal, if any; (...)

3. When the person in charge of the treatment projects the subsequent treatment of personal data for a purpose other than that for which it was collected, will provide the interested party, prior to said subsequent treatment,

information about that other purpose and any additional information relevant to

tenor of section 2.

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4. The provisions of sections 1, 2 and 3 shall not apply when and in the

to the extent that the interested party already has the information.

In the present case, the communication of data to the unified registry is a treatment

supervening, that is, not initially foreseen and not expressly informed to the

interested at the time of data collection.

However, it must be taken into account that it is a new treatment carried out under

of the entry into force of a general legal provision that in the

time of data collection under the repealed Royal Decree 795/2010,

of June 16, it was impossible to foresee its existence.

Now, in Royal Decree 115/2017 of February, which replaced it, it was established

the obligation to constitute the unified registry in its article 7.2, whose origin

can be found in Regulation (EU) 517/2014 of the Parliament and of the

Council of April 16, 2014, on fluorinated greenhouse gases, which

Article 17 provides for the creation - no later than January 1, 2015 - of a registry

email for these purposes.

Therefore, the legal analysis must focus on how to satisfy the right to

information of those people who registered under the Royal

Decree of 2010 that did not provide for inclusion in the unified registry, since

As of the entry into force of Order TEC/544/2019, of April 25, the

consulting Autonomous Community, already expressly included the new

treatment in the informative clause established for this purpose.

To offer an answer in law it is important to take into account the following:

In the first place, the very literal wording of article 13.1 of the RGPD establishes

“when” the information is to be provided, “at the time it is obtained”,

Therefore, if the treatment is not planned at that time, obviously it cannot be done.

inform, however, when a new treatment is going to be carried out, in addition to

have an adequate legal basis, the duty to inform must be fulfilled, except

that any of the causes that exempt from the fulfillment of said duty concur.

In this case, it is appropriate to bring up the provisions of article 13.4 of the RGPD that

exempt from the duty of information of sections 1, 2 and 3, when and to the extent

in which the affected party has the information.

Precept that must be interpreted in connection with another element to be taken into account,

the principle of publicity of the rules and the purpose pursued with their

application, because let's not forget that the new treatment is planned in a

provision of a general nature that is part of the legal system and, therefore,

subject to the general principles of law, among which is the aforementioned

beginning.

Publicity of regulations is one of the pillars of the rule of law. In

Indeed, the Spanish Constitution, in its article 9, includes the principles in which

specifies the definition of the rule of law proclaimed in article 1, and guarantees

In addition to legal certainty, the publicity of the rules.

The Constitutional Court in its Judgment 179/1989, of November 2, has

referred to this principle in the following terms: "The Constitution, in its article 9.3,

guarantees the principle of the publicity of the norms. This warranty appears as

ineluctable consequence of the proclamation of Spain as a State of law,

and is closely related to the principle of legal certainty enshrined in

the same art 9.3 C.E., since only the legal positions of the

citizens, their ability to exercise and defend their rights, and the effective

Subjection of citizens and public powers to the legal system, if the

addressees of the regulations have an effective opportunity to know them as soon as

such rules, by means of an instrument of general dissemination that attests to their existence

and content, so they will be obviously contrary to the principle of publicity

those norms that were impossible or very difficult to know."

This principle is especially related to the principle of legal certainty, which

other aspects serves the certainty of the citizen of the legal consequences of their

acts and the predictability of the response of the State and the rest of the subjects bound by

the norm, under the legal system.

Therefore, in the case of the query, the owners of the data who registered at the

protection of the indicated royal decrees are provided with instruments to know

that the registration they made in the regional registry will be communicated to the registry

unified state, because precisely the rule that has an impact on what is indicated

in those royal decrees and, above all, that is applicable to its activity

professional, foresees the existence of this new treatment. Indeed, the holders of

the data that will be processed are direct recipients of the standard

that provides for such treatment, and, therefore, it is presumed that they are in a position to

know how the new standard affects your personal data.

Therefore, those treatments of personal data that are modified by the

application of a legal provision of a general nature and that covers guarantees of

advertising, the owners of the data will find in said advertising, at least

information on the existence of the new treatment, and where appropriate, other

aspects that were not revealed because obviously they were not known or

even by the data controller.

From said publicity, to know the existence of a new treatment, the

affected may contact the person in charge or those in charge to exercise their

rights, in particular the right of access provided for in article 15 of the RGPD.

Another solution would entail a disproportionate effort for the person responsible for the

treatment. Think, for example, of processing a large volume of data that

make a public administration under its powers, or an entity

that handles millions of data from its customers and that after the entry into force of

a new rule that is applicable to it is expected that the data it handles will

be treated for another purpose or communicated to a third party, not initially foreseen.

The disproportionate effort that would be required to inform each holder of

the data. In practice, as a suitable and complementary solution,

update the privacy policies both in digital media and in the forms

of obtaining data -as it happens in the case of the query- and it would be taken into

account that the existence of this new treatment is established in a creditor norm of

the corresponding advertisement.

In conclusion, in those cases in which there is a treatment of personal data and after the entry into force of a general provision, are modified certain aspects of the same, with respect to the data previously processed, the principle of publicity of the norms serves, among others, the purpose of offering information about the existence of the new treatment, and as a result, the affected may exercise, where appropriate, the rights it deems appropriate, such as the right to access.

IV

What is resolved in this report should not be interpreted in the sense that any processing based on a general legal provision should not be reported in accordance with article 13 of the RGPD, -because its validity and application remains unscathed-, but the specific circumstances referred to have been taken into account, on the one hand, because the data controller did not offer certain information, because the circumstances simply did not exist or could not be foreseen when obtained the data -it is an unexpected treatment-, and on the other hand, taking into account account that the treatment occurs as a result of the entry into force of a norm subject to to the principle of publicity provided for in article 9.3 of the Spanish Constitution and whose direct recipients are the owners of the personal data that will be treatment object.