

## DP - LED -Spanish Decree 933-2021 - Analysis

### Analysis of Spanish Royal Decree 933/2021:

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**In short:** The Spanish government has approved a Royal Decree by which people or companies that offer lodging and/or rental car services, will need to share a very broad list of personal data with Spanish enforcement authorities (the police).

#### Summary of the measures:

The obligations of [Royal Decree 933/2021](#) apply to services, whether offered by a business or otherwise, that provide overnight accommodations in exchange for economic consideration, including:

- E-commerce platforms that act as intermediaries between lodging services and consumers through electronic means (e.g. the internet) insofar they provide said services in Spain.
- Lodging activities open to the public and regulated by the corresponding sectorial laws, such as hotels, rural houses, hostels, etc.
- Camping facilities and motor-homes.
- Tourism operators that act as intermediaries between lodging companies and consumers.
- traditional rental car companies,

Companies under the scope of the Royal Decree will need to have in place an electronic registry in order to comply with the new obligations. Before starting the activity, the company will need to communicate business data details in order to "sign-up" in the platform.

In relation to customer data, it will need to complete a very detailed form and keep customer data for **three years**. These data will need to be communicated through an electronic platform to the relevant authorities. **This will apply to all travellers irrespective of their age. Data are collected directly to all travellers over 14 and via their accompanying persons for travellers under 14.**

Data to be shared includes, for instance:

- Traveller Data: (i) name; (ii) surname; (iii) second surname; (iv) gender; (v) ID number; (vi) document support number; (vii) type of document (national ID, passport, foreigner ID); (viii) nationality; (ix) date of birth; (x) place of habitual residence, including full address, region (*localidad*) and country; (xi) landline number; (xii) mobile phone number; (xiii) email address; (xiv) number of travelers; and (xv) kinship relationship between travelers (in the case that someone is a minor), (xvi) GPS data.
- Transaction data: (i) contract data, including reference number, date and signatures; (ii) contract execution data, including date and hour of entering and exiting; (iii) property data, including

full address, number of rooms and internet connection (yes/no); and (iv) payment data, including type (cash, credit card, etc.), identification of the means of payment (type of card and number, etc.), holder of the means of payment, expiration date of the card, date of payment, paid amounts and identification of the transaction/authorization.

#### **Preliminary analysis:**

- **Data Collected and age requirements:** According to annex 1 and 2 of the Decree, the number of data to be collected will be enormous and very invasive, and will apply to minor. On the latter, data will be collected either directly if the person is over 14 years old or via the accompanying persons for children under 14 years old.
- **Vague, unclear and potentially far-reaching purpose for the collection of data:** While the Royal Decree indicates in its preamble that the purpose for the collection of such data is to better fight against terrorism and organised crime, article 7.1 of the Decree seems to indicate that these data will be covering a much wider purpose. Art 7.1 of the Royal Decree provides that the *“data generated in this royal decree will be kept in the Secretary of State for Security. Your treatment may only be carried out by the Security Forces and Bodies in the performance of their respective powers in the field of prevention, detection and investigation of the crime assigned to them.”* That can mean that the data generated may be used by Security forces and bodies for purposes other than fight against terrorism and organised crime. Applied to more common offences, the proportionality of the Decree can further be challenged.
- **Data Retention:** the data must be kept for a maximum period of 3 years, which can be considered disproportionate, in particular with regards to minors under 14.

#### **Possible infringement of Directive 2016/680:**

Considering that the Decree will actually enable the Spanish State to collect an unprecedented amount of data, on every category of travellers, including minors under 14 for a maximum period of three years, it is clear that the Royal Decree would be infringing several articles of the Law Enforcement Directive 2016/680<sup>1</sup>, in particular the following provisions:

*Article 1 2. (a)*

*2. In accordance with this Directive, Member States shall:*

*(a) protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data; and*

The disproportionate collection of travellers data will likely infringe this provision as it doesn't protect their right to the protection of personal data

#### **Article 4 1. Para (b), (c) and (e)**

*Article 4*

*Principles relating to processing of personal data*

*1. Member States shall provide for personal data to be:*

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<sup>1</sup> [Directive 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data](#)

- (b) collected for specified, explicit and legitimate purposes and not processed in a manner that is incompatible with those purposes;*
- (c) adequate, relevant and not excessive in relation to the purposes for which they are processed,*
- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which they are processed;*

- The purpose laid down in article 7.1 of the Royal Decree seems too vague and too far reaching to be considered as explicit as provided in para (b)
- The variety and far-reaching amount of data collected, applicable even to minor is clearly excessive in relation to the vague purpose laid down in article 7.1 of the Royal decree, thus infringing art 4.1 (c) of Directive 2016/680. The Spanish Royal Decree clearly doesn't respect the principle of Data minimisation<sup>2</sup>
- It is questionable whether a data retention of 3 years, in particular when collected on minors is considered necessary as provided in art 4.1 (e) of Directive 2016/680

**Possible actions:**

**National:**

- I. Challenge the decree before a court regarding the infringement of Decree Spanish Royal Decree 933/2021, with EU law, in particular the adequacy of:
- II. Under the same legal ground, contact the Spanish data protection authority

**EU level:**

- I. Send a Letter to DG JUST Unit C3 - DATA PROTECTION: Explaining the situation and possibly organise a meeting/ discuss possible actions (letter sent)
- II. Contact and inform European Data Protection Board (after meeting with EC)

**Other actions:**

- EU Parliamentary question (in progress via ACAVe)

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<sup>2</sup> In accordance with the principle of data minimisation, by default, only the amount of personal data that is necessary for the processing shall be processed. Point 48 of guideline 201904  
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