CNS 17/2018

Opinion in relation to a consultation of a Regional Council regarding the terms of responsibility and treatment of the data of the Diba-Hèstia platform

A letter from a County Council is presented to the Catalan Data Protection Authority, in which several questions are formulated regarding the terms of responsibility and treatment of personal data of the Diba-Hèstia platform.

The consultation shows that the Regional Council, as the body responsible for the basic social services of the Basic Area of Social Services (ABSS), and the 25 councils that make up the ABSS, need to clarify some legal issues relating to the terms of responsibility and treatment of the data of the Diba-Hèstia platform.

The consultation explains that Diba-Hèstia was implemented in 2015, as the basic work tool of the 25 Municipal Basic Social Assistance Teams (EBAS), and that it is the basic work tool of the EBAS, to manage information and the documentation of the people who address these teams.

The consultation explains that on March 17, 2015, the County Council approved the signing of the Agreement of adhesion with the Provincial Council of (...) for the deployment of Diba-Hèstia in the aforementioned municipalities, and that all the Town Councils approved the document " Content of the agreement regarding the protection of the data contained in DIBA-HÈSTIA", in which they authorize the Regional Council, according to the consultation, to take charge of the processing of the data. Reference is also made to the "Standard agreement to regulate relations between the Provincial Council of ... and the local bodies of its territorial demarcation that adhere to it, for the deployment of the Diba-Hèstia social services information system". of 2017, which replaces and cancels the previous model Agreement, of 2013.

Having analyzed the request, the documentation that is provided, in view of the current applicable regulations and the report of the Legal Counsel, the following is ruled.

I

(...)

II

The consultation shows that the Regional Council, as the body responsible for the basic social services of the Basic Area of Social Services (ABSS), and the 25 councils that make up the ABSS, need to clarify some legal issues relating to the terms of responsibility and treatment of the data of the Diba-Hèstia platform.

The consultation explains that Diba-Hèstia is the basic work tool of the Basic Care Teams Social municipals (EBAS), which was implemented in 2015, and which allows you to manage all the information and documentation of people who apply to EBAS.

The consultation explains that all the Councils approved the document "Content of the agreement regarding the protection of the data contained in DIBA-HÈSTIA", in which they authorize the Regional Council, according to the consultation, to take charge of the data processing. The consultation provides a copy, among other documents, of the standard agreement that regulates the deployment

of the Diba-Hèstia platform, from 2017, which replaces and cancels the previous model agreement, from 2013, and refers to various issues relating to the use of the platform and the data contained therein.

According to the consultation, Diba-Hèstia "It is made up of the following modules: agenda, personal files, family files, data exploitation, annual reports and procedures. It allows (...) to manage all the information and documentation of the people who address the EBAS. Its objectives are the management, consultation and exploitation of data from social records and it contains personal data of a high level of security. It is designed so that all the actions of the other services that make up the ABSS can also be integrated, such as home help services, socio-educational intervention services, immigration and the information and care service for women."

According to the consultation, the Regional Council and the Councils that make up the ABSS "establish four-year collaboration agreements for the financing, establishment and programming of social services", which, according to the consultation, are in a period of update

In this context, the consultation requests an opinion regarding the responsibility and treatment of data on the DIBA-HÈSTIA platform, and asks the **following questions:**

"1. What legal position with regard to the processing of personal data of the interested parties involved in the EBAS files has been attributed to each body or body of the public administration to which we have referred: Diputació de (...), Administración Oberta de Catalunya (Generalitat de Catalunya), town councils of less than 20,000 inhabitants that make up the ABSS and the Regional Council (...), owner of the competition?

2. In other words, which of these bodies or organizations holds the category of Data Controller, Data Controller or Sub-Data Controller?

3. Is the Regional Council (...) Responsible for the Processing and/or are the municipalities also responsible?

4. Is the Regional Council (...) in charge of the Treatment, by virtue of the document approved by the town councils?

5. In the name of which of the administrations, City Councils or Regional Council (...), must the digital certificates of professionals be issued to access personal data queries through DIBA-HÈSTIA?"

III

Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), which has already entered into force, will be applicable from 25 May 2018 (art. 99 GDPR).

According to the RGPD, it is personal data: "all information about an identified or identifiable natural person ("the interested party"); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person; (art. 4.1 RGPD).

The processing of personal data is "any operation or set of operations carried out on personal data or sets of personal data, either by

automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction ;" (art. 4.2 RGPD).

Therefore, the processing of data of natural persons served by municipal social services is subject to the principles and guarantees of the personal data protection regulations (RGPD).

We start from the basis that the processing of personal data must have a person in charge, who consequently assumes a series of responsibilities and obligations regarding the processing that is carried out.

It is responsible for data processing: "the natural or legal person, public authority, service or other organism that, alone or together with others, determines the purposes and means of the treatment; if the Law of the Union or of the Member States determines the purposes and means of the treatment, the person responsible for the treatment or the specific criteria for his appointment may be established by the Law of the Union or of the Member States;" (art.
4.7 GDPR); is in charge of the treatment: "the natural or legal person, public authority, service or other organism that treats personal data on behalf of the person responsible for the treatment;" (art. 4.8 GDPR).

Having said that, according to article 15.1 of Law 12/2007, of 11 October, on social services (hereafter, LSS), the public system of social services is structured into basic social services and specialized social services . Basic social services are organized territorially and include "basic equipment" (EBAS), home help and teleassistance services and non-residential socio-educational intervention services for children and adolescents (art. 16.2 LSS).

The basic areas of social services (ABSS) are the primary unit of social care for the purposes of providing basic social services (art. 34.1 LSS). Article 34.3 of the LSS provides that: "The basic area of social services must group municipalities with less than twenty thousand inhabitants. In this case, the management corresponds to the county or the associative body created especially for this purpose. (...)."

According to the consultation, the ABSS of the County Council (CC) consists of 25 EBAS "which belong to the 25 councils that make up the ABSS and are the ones who undertake the recruitment of staff".

According to article 27.1 of the LSS, "the Administration of the Generalitat, the municipalities and the other local bodies of Catalonia are the competent administrations in matters of social services, in accordance with the provisions of this title and, where appropriate , the legislation on territorial organization and local regime."

According to article 31.1 LSS, municipalities, among others, are responsible for establishing the centers and services corresponding to the scope of basic social services (art. 31.1.d)
LSS), and fulfill the functions of basic social services (art. 31.1.e) LSS). According to article 31.2 LSS: "The counties replace the municipalities with less than twenty thousand inhabitants in the ownership of the competences of the basic social services that these municipalities are not in a position to assume directly or jointly." The LSS takes into account the population element (more or less twenty thousand inhabitants) for the purposes of determining the provision of social services by supra-municipal bodies, in the case at hand, the County Council.

According to article 32 of the LSS, it is the responsibility of supra-municipal local bodies, among other functions, to provide technical, economic and legal support to the bodies managing the basic areas of social services

(art. 32.a) LSS), as well as offering information and documentation services in the basic areas of social services (art. 32.b) LSS).

For the purposes that concern, the responsibility for data processing, as well as the attribution of the status of data controller, responds, in the first instance, to the management model of the basic social services that the local bodies involved in said service have agreed, in accordance with the regulations.

On the one hand, it may be that municipalities with less than twenty thousand inhabitants (such as the 25 municipalities referred to in the consultation) directly provide certain basic social services as, in principle, they are entitled to (art. 31.1.e) LSS), if they are "in a position to assume" this benefit (art. 31.2 LSS). In this case, the Town Councils that, despite having less than 20,000 inhabitants, manage certain basic social services on their own, should in principle be considered as responsible for the personal data processed, for the purposes of the data protection regulations (art. 4.7 GDPR).

Otherwise, if municipalities with less than 20,000 inhabitants consider that they are not in a position to provide basic social services, the corresponding County Council would assume ownership of the competence (art. 31.2 LSS). Thus, the CC would provide and manage basic social services in those municipalities that, given the provisions of article 31.2 LSS, have decided to delegate the ownership of the competence that in principle corresponds to them in this matter, and establish it in this way . In these cases, in line with what this Authority has pointed out on previous occasions (Opinions CNS 8/2010 or CNS 13/2014), the CC would be the one competent to manage basic social services and, consequently, it can be deduced that this supramunicipal entity would be responsible for the treatment of personal data processed in this context (files of people served by basic municipal social services).

A priori it is up to each municipality with less than 20,000 inhabitants to determine whether it manages basic social services on its own account (art. 31.1 LSS) or if the Regional Council assumes the competence to manage basic social services, a decision that would condition who will decide on the processing of personal data and, therefore, who should be considered as the person responsible for the processing, for the purposes of the regulations on the protection of personal data.

It should be noted that, according to the consultation itself, in the case we are dealing with, the CC is the body responsible for the basic social services of the ABSS according to article 31.2 LSS and, therefore, is responsible for the EBAS .

It is not known when the "replacement" would have taken place - in the terms of article 31.2 LSS -, in the ownership of the competence in question, and if this has been formalized for each and every one of the 25 affected municipalities (holders , in the first instance, of the provision of basic social services in the municipality itself, eg art. 31.1.e) LSS), in favor of the County Council. However, as can be seen from the information provided, it seems that the CC would have assumed ownership of the competence over basic social services in the 25 municipalities that make up the ABSS, in terms of article 31.2 LSS.

In this sense, it seems logical that the supra-municipal entity that is the holder of the competence (the CC, according to the consultation), has the decision-making capacity on the purpose, content and use of the processing of the personal data that is must try to comply with the service of which it is the owner and, as a logical consequence, that it is the "responsible" body, for the purposes of the personal data protection regulations.

However, as this Authority has done on previous occasions (Opinions CNS 22/2018, CNS 3/2011, and 8/2010, which can be consulted on the website: www.apdcat.cat), it must be taken into account

the forecasts relating to the financing of basic and specialized social services (articles 62 and 63 LSS). Specifically, according to article 62.1 LSS:

> "1. The town councils and the Administration of the Generalitat share the funding of basic social services, including social service teams, programs and projects, the home help service and other services that are determined to be basic.
> Without prejudice to the fact that basic social services must tend to be universal and free, the user may have to co-pay the financing of teleassistance and home help services."

Likewise, article 60.5 LSS provides that municipalities and other local bodies must include in their budgets the allocations necessary to finance the social services under their jurisdiction.

The Royal Legislative Decree 2/2004, of March 5, which approves the revised Text of the Law regulating local finances, foresees that local entities exercise the functions of internal control with respect to their economic management, autonomous bodies and the mercantile companies that depend on it, in its triple aspect of auditor function, financial control function and effectiveness control function (articles 213 et seq.).

It follows from this that, although the CC manages and replaces the competence of the municipality in the terms indicated, this does not exclude - by application of the LSS itself and other cited regulations - that the 25 municipalities have an equal participation in the provision of social services. For the purposes that are relevant, the articulation of the competences in the matter of social services by the LSS in which there is a shared exercise of competence between different public administrations, and in which the obligation to finance basic social services is attributed to the municipality , along with the exercise of economic control and inspection functions, means that the 25 Town Councils must also be recognized as responsible for the processing of the information they require, and that it can be processed, if necessary, through of the Diba Hèstia platform, to carry out functions related to the financing of social services and the supervision of the appropriate use of budget allocations.

For all of the above, in principle, both the CC and the 25 City Councils should be given the status of responsible for the processing of personal data (art. 4.7 RGPD), processed on the Diba-Hèstia platform, which is necessary for the provision of the basic social services, taking into account their respective competences (management of the service and activity of the EBAS grouped in the ABSS, in the case of the CC, and exercise of competences in relation to the financing of the service, by the Councils).

We note that article 26 of the RGPD provides for the possibility of establishing joint responsibility for the same treatment, in the following terms:

> "1. When two or more responsible parties jointly determine the objectives and means of the treatment they will be considered co-responsible **for the treatment.** The co-responsible parties will determine transparently and by mutual agreement their respective responsibilities in fulfilling the obligations imposed by this Regulation, in particular regarding the exercise of the rights of the interested party and their respective obligations to provide information referred to in the articles 13 and 14, except, and to the extent that, their respective responsibilities are governed by the Law of the Union or of the Member States that applies to them.
> Said agreement may designate a point of contact for those interested.
>
> (…)."

Despite this forecast, this does not seem to be the case at hand. As has been said, both the CC and the municipalities have powers in the field of basic social services, but, from the information available, it does not appear that these entities jointly determine the objectives and means of treatment, in the terms of article 26.1 RGPD. On the other hand, it is not known that these local entities have determined their respective responsibilities, as required by the mentioned article 26.1 RGPD.

Therefore, although both local entities will have to process, where appropriate, personal data through the Diba-Hèstia platform, the treatment responds to different aspects of the provision of social services, as is clear from the regulations studied, by the which does not seem to be a case of "co-responsibility" for the same treatment, in the terms of article 26 RGPD.

Taking into account the considerations made, in relation to the **third question:** "3. Is the Regional Council (...) Responsible for Processing and/or are the town councils also responsible?, given the regulations studied, it seems that both the CC and the 25 Town Councils could be considered responsible for the processing of personal data through the Diba-Hèstia platform, each in relation to the data processing necessary for the exercise of their respective competences in the matter of basic social services, in the terms indicated.

IV

Despite what has just been stated, based on the information available, the relationship established between the CC, the 25 municipalities and the rest of the entities referred to in the query (Diputació and CAOC), does not seem to respond to the scheme indicated in the previous Legal Basis, according to which the CC and the 25 Town Councils could be responsible for the treatment that, in each case, corresponds to them.

At this point, it is necessary to refer to the provisions of the "Standard Agreement to regulate the relations between the Provincial Council of (...) and the local bodies of its territorial demarcation that adhere to it, for the deployment of the system of social services information "Diba-Hèstia" (BOPB, of 27.3.2017), -hereafter, the standard Agreement-, which accompanies the consultation.

Clause 2.1 of the 2017 Model Agreement (similar to clause 3 of the 2013 Model Agreement, which would no longer be in force, and of which a copy is also attached to the consultation), provides that the following may adhere to it:

> "a) **All local bodies in the demarcation of (...) that manage a Basic Area of Social Services** in accordance with the territorial organization of the public system of social services established by the Department of Social and Family Welfare of the Generalitat of Catalonia
>
> b) Optionally, the accession of municipalities with less than 20,000 inhabitants that manage social services on **their own** will also be accepted.

To this it should be added that, according to clause 2.3 of the 2017 Standard Agreement (equivalent to clause 3.3 of the 2013 Standard Agreement):

> "2.3.- In the event that the accession is carried out by a supra-municipal entity, **if it is not the one responsible for the data, it** must attach, to the accession process, the access agreement to the data on behalf of third parties from all the municipalities it represents, which allows the Provincial Council (...) and the AOC Consortium to subcontract the processing of personal data."

According to the information we have, the CC would have adhered to the 2013 standard agreement on behalf of the 25 municipalities, and not as "responsible" (clause 3.3 of the 2013 agreement). Please note that there are several data files registered in the Data Protection Register of Catalonia, of this Authority, the responsibility of the Councils to which the query refers, whose purpose is to process the data of people served by the municipal social services .

In the Plenary Agreement of the Regional Council, dated 10.03.2015 (Annex 4, which is attached to the consultation), which approves the adhesion to the 2013 standard agreement, it is stated that: "Given that the Regional Council (...) has the competence to promote and manage the provision of basic social services (...) in municipalities with less than 20,000 inhabitants", and "Given that (...) the Provincial Council (.. .) takes a qualitative step forward in the support platform of the information system of social services by deploying the new Diba-Hèstia platform (...), in the Plenary Agreement, quoted, said Agreement is accepted, and it is agreed to request the **City Councils "to authorize the CC for take charge of the processing** of the personal data contained in the DIBA HÈSTIA platform of each municipality, by signing the document called "Content of the agreement regarding data protection", which is attached to this agreement forming- part of it for all legal purposes (...)."

The consultation provides a copy of the document called: "Content of the agreement regarding data protection" (Annex 5). Specifically, the attached document is the one that would have been signed, on 10.12.2015, by the mayoress of one of the 25 municipalities referred to in the consultation. Given the date of signature, it seems that the document would have been signed in relation to the 2013 Standard Agreement. It follows from the terms of the consultation that the rest of the 24 affected municipalities would have signed the same document, although it is not known attach the respective copies.

Taking into account the documentation provided, it seems clear, at least in relation to the application of the 2013 Standard Agreement, that the affected local bodies (CC and the 25 councils that make up the ABSS) would have articulated a management model for social services -and, for the purposes of interest, of processing the personal data subject to consultation-, according to which the 25 Town Councils would be responsible for the corresponding data files and would have authorized the CC, as the person in charge of the treatment, to sign said Agreement of 2013.

It must be noted that the choice of a certain management model for basic social services (in terms of the LSS) and, consequently, the concretization of responsibility for the processing of data, does not correspond to this Authority, but to the affected municipal and supra-municipal bodies. As has been pointed out, based on the management model that is established, the attribution of responsibility for the treatment must correspond to that entity that "determines the purposes and means of the treatment", in the terms of the article 4.7 GDPR.

Thus, beyond making it clear that, from the moment that the CC has assumed ownership of the competence of basic social services (eg art. 31.2 LSS), in principle it should be considered as responsible for the treatment (without prejudice that, in the terms described, the 25 City Councils would also have the status of responsible for the treatment), it is not up to this Authority to exclude the possibility -which is also allowed by the sectoral regulations (LSS)-, that the affected local bodies decide to maintain the model of management that reflects the 2013 Standard Agreement, according to which the 25 City Councils would be responsible for the treatment and the CC would be in charge of the treatment (clause 3.3 of the 2013 Standard Agreement, and clause 2.3 of the 2017 Standard Agreement).

v

Having said that, it is necessary to refer to the legal position that the Provincial Council (...) and the CAOC would have.

Article 28 of the RGPD provides that:

> "1. When a treatment is to be carried out on behalf of a person responsible for the treatment, he will only choose a person in charge who offers sufficient guarantees to apply appropriate technical and organizational measures, so that the treatment complies with the requirements of this Regulation and guarantees the protection of the rights of the interested party.
>
> 2. The person in charge of the treatment will not resort to another person in charge without the prior written authorization, specific or general, of the person in charge. In this last case, the person in charge will inform the person in charge of any change envisaged in the incorporation or substitution of other persons in charge, thus giving the person in charge the opportunity to oppose said changes. (…)."

The data protection regulations thus refer to the possibility of subcontracting with a third party or, more precisely, to the possibility of the person in charge of the treatment using another person in charge (art. 28.2 RGPD), which we will refer to as to "subcontractor".

Clause 2.3 of the 2017 standard agreement provides that, with the signature of the framework agreement by a supra-municipal body that is not the person responsible for the treatment, both the Provincial Council and the AOC Consortium are both considered to be "sub-processors" of the treatment .

However, if we start from the premise that the controller would be, on the one hand, the CC, this could sign the standard agreement and, in short, act in relation to data processing on the Diba-Hèstia platform, no already as a person in charge -on behalf of the Town Councils-, but as a person in charge, with respect to the treatment that corresponds to him based on his competences in the field of social services. On the other hand, as has also been pointed out, the 25 Councils should also be considered responsible, with respect to the treatment necessary to exercise their powers of financing the service.

Therefore, for the purposes of the question posed, the "legal position" of the Provincial Council of (...) and the CAOC would not, in both cases, be that of "sub-contractor" (as is clear from clause 2.3 of the Model Agreement), but that the Provincial Council of (...) would be in charge of the treatment on behalf of those responsible (the CC, on the one hand, and the various Councils on the other), while the AOC Consortium would be sub-in charge of the treatment.

In fact, clause 4.4 of the 2017 standard Agreement specifies the obligations that correspond to "the Provincial Government (...) as the person in charge of the treatment", and clause 4.5 of the same Agreement details the obligations of the sub-person in charge of the treatment, specifically, stipulates that: "The content of the subtraction of the data is what is indicated in the General Conditions of the Services of the AOC Consortium and in the specific conditions of provision of the Hèstia service. (...)."

Clause 4.1 of the 2017 Standard Agreement provides the following:

> "a) The affiliated local Ens, as responsible for the files:
>
> THEY INSTRUCT the Provincial Government (...) the processing of the personal data contained in the DIBAHÈSTIA platform and AUTHORIZE the Provincial Government (...), as the main **processor ,** to enable the Consorci Administración Oberta de Catalunya, as a sub- **processor of the treatment,** to treat, on behalf of the affiliated entities, as responsible for the file, the personal data necessary to provide the user support service, support for the installation of the application and database, support for in configuration, support for data migration work, evolutionary development

of adaptation in terms of sectors, work teams, access to register data and management of the agenda module, training of local body users, support for the management and resolution of Hèstia software incidents."

As can be seen from clause 4.1.a) of the 2017 Standard Agreement, given that the local entity that would adhere to the Agreement would be each of the responsible local entities (on the one hand, the CC, and on the other, the Town Councils), these would establish an order with the County Council (...) for the processing of the personal data contained in the Diba-Hèstia platform, and would authorize the County Council, as the person in charge of the treatment, to subcontract to the CAOC the processing of " the personal data necessary to provide the user support service, support for the installation of the application and database (...), in the terms provided for in the standard agreement.

With regard to the CAOC, according to its Statutes (Resolution GAP/1932/2004, of July 6), the purpose of the Consortium consists in the implementation of the electronic systems necessary to provide the services that the consortia public administrations determine (art. 4).

According to article 22 of Law 29/2010, of August 3, on the use of electronic media in the public sector of Catalonia (LUMESPC):

"1. The Consorci Administración Oberta Electrònica de Catalunya, in order to make effective the interoperability between the applications and the information systems used by the entities that make up the public sector of Catalonia, may have access to data from files or data processing of entities, if access is necessary to provide the services established by this law.

2. The Consorci Administración Oberta Electrònica de Catalunya, in the processing of personal data that it must carry out on behalf of the entities that make up the public sector of Catalonia, both with respect to the entities that make certain information available electronically and with respect to those who are interested in accessing it, is in charge of this treatment, (...)."

Without prejudice to the attribution to the CAOC of the general condition of "in charge of treatment" (ex. art. 22.2 LUMESPC), in the specific context of the standard agreement for the use of the Diba-Hèstia platform, given that the responsible local entity designates the Provincial Government as the person in charge of the treatment (clause 4.4), the "legal position", in the terms of the consultation, of the CAOC, would be that of sub-person in charge of the treatment, as reflected in the standard agreement itself.

Thus, as provided for in clause 4.2 of the standard agreement: "For the execution of the services derived from the fulfillment of the object of this order, the local bodies attached to the DIBA-Hèstia platform, as responsible for the file, or the Provincial Government (...), as the person in charge of the treatment, will make available to the AOC Consortium, sub-in charge of the treatment, the personal data necessary to carry out the actions that are the subject of this agreement."

VI

Question 4. "Is the Regional Council (...) in charge of the treatment, by virtue of the document approved by the town councils?"

At the outset, since the data processing we are dealing with must extend beyond the date of application of the RGPD (25.5.2018), it must be taken into account that the RGPD has introduced changes in the content minimum of the contract that regulates the order of treatment, which

they affect both the obligations of the person in charge, as well as the obligations of the person in charge and, where appropriate, of the sub-persons.

Therefore, from the aforementioned date (25.5.2018) any processing order must satisfy the requirements of the new regulation, so that the provisions of the standard agreement that is in force on the date of application of the RGPD will have to adjust (and interpret) in accordance with the provisions of article 28.3 of the RGPD, to which we refer.

At this point, and with reference to the said treatment commission contracts that the CC, on the one hand, and the Town Councils, on the other, would establish with the County Council (if applicable, through the same standard agreement), it is necessary take into account the Draft Organic Law on the Protection of Personal Data (LOPD Draft), which is in the parliamentary processing phase (BOCCGG, no. 13, of November 24, 2017), and which regulates, among others, the figure of the order of the treatment (art. 33 Project of LOPD).

The fifth transitory provision of the LOPD Project establishes the following, with respect to the treatment commission contracts:

> "The data processor contracts signed prior to May 25, 2018 under the provisions of Article 12 of Organic Law 15/1999, of December 13, on the Protection of Personal Data will remain in force until expiry date indicated in them and, in the event of an indefinite agreement, until four years have passed since the said date.
>
> In the event that the contracts provide for their extension at the end of their expiration, either by mutual agreement between the parties or in the absence of a complaint by any of them, their adaptation must occur prior to the time when said extension was foreseen."

Despite this, to date this moratorium regarding the application of the requirements derived from Article 28.3 RGPD has not yet been approved.

Having said that, if we start from the premise that the CC and the Town Councils should be considered as responsible for the treatment - each with reference to the data treatment that corresponds to them given their respective powers in the field of social services, given the provisions of the LSS-, we must understand that the CC would not be "in charge of the treatment", even though, according to the information provided, at the time the Councils would have signed a document ordering the treatment (Annex 5), in accordance with the forecasts of article 12 of Organic Law 15/1999, of December 13, on the protection of personal data (LOPD), rule applicable until May 25, 2018 (ex. art. 99 RGPD) and, therefore , applicable at the time of signing said document (Annex 5).

In other words, the scheme that would have been established at the time (according to which, the 25 municipalities, as responsible, would have signed a treatment assignment contract with the CC -in charge of the treatment-), which would have signed the standard Agreement, in the name and representation of the Town Councils, based on which both the County Council and the CAOC would be sub-responsible for the treatment), does not correspond to said premise.

Consequently, it is the CC and the 25 Town Councils, as responsible for the respective data processing, that should sign the corresponding processing commission contract with the Provincial Council (...).

Thus, on the one hand, so that the CC can entrust the Provincial Government (which would be in charge of the treatment) and the CAOC (as sub-in charge) the processing of the data of which it is

responsible in the terms indicated, it will be necessary to establish the corresponding contract or legal act (in terms of article 28.3 RGPD).

On the other hand, each of the Town Councils should establish the corresponding processing contract with the County Council (providing that the CAOC will be sub-commissioned), regarding the processing of the data for which each Town Council is responsible, in the terms indicated (in relation to the competences of the Town Councils in the matter of financing municipal social services), in the event that this data is to be processed through the Diba-Hèstia platform.

In the event that the different persons responsible for the respective treatment (CC and Councils) so establish, the same Agreement could include both assignments.

In any case, it may be of interest to consult the Guide on the controller in the GDPR prepared by the data protection authorities to help controllers and processors in adapting to the requirements of the GDPR, available on the Authority's website http://apdcat.gencat.cat/ca/inici/.

VII

Finally, we refer to the **fifth question:** "In the name of which of the administrations, City Councils or Regional Council (...), the digital certificates of the professionals must be issued to access personal data queries through DIBA -HESTIA?"

According to the inquiry, the Hèstia service of the CAOC would have informed the CC that "access to this Hestia functionality is only allowed for digital certificates that are in the name of the County Council". The consultation adds that these digital certificates "are processed by each of the councils that have contracted these professionals, in accordance with the collaboration agreements between the councils and the County Council".

According to the fifth clause of the 2017 model agreement, "The local bodies attached, as responsible for the files, AUTHORIZE the Provincial Government (...), as in charge of the treatment, to adopt those measures that are necessary to facilitate access to the data of Via Oberta services through the Hèstia application. For these purposes, the Provincial Council (...) will process the obtaining of the certificate of application necessary to interact with the AOC. In turn, the affiliated local body, if necessary, will adhere to the Interoperability Framework Agreement and the specific protocols that are required for the use of the various Via Oberta services."

It is up to those responsible for the processing (the CC and the Town Councils) to establish and specify how data processing should occur in relation to the exercise of their respective powers in the field of social services, in particular, to determine which user profiles or professionals must access and process personal information and through which means it must be accessed (if applicable, through a digital certificate or another means).

This, without prejudice to the fact that access by certain user profiles to Diba-Hèstia's personal information through a digital certificate is limited by the conditions and characteristics of the provision of the service by the CAOC, a matter that unknown, given the information available, and that, in any case, it is not up to this Authority to determine.

In any case, the access and subsequent processing of the personal information contained in Diba Hèstia, by authorized users, must properly comply with the principles and guarantees of the data protection regulations (RGPD).

In this sense, according to article 5.1.c) of the RGPD: "Personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated ("minimization of data")."

Therefore, it must be agreed that the different professionals (user profiles) must have access, only, to that personal information of the Diba-Hèstia platform, which is necessary and relevant for the fulfillment of the respective powers of the entity local on which they depend (management of the service and activity of the EBAS grouped in the ABSS, in the case of CC users, and exercise of powers in relation to the financing of the service, in the case of City Council users).

In accordance with the considerations made so far in relation to the query raised, the following are made,

Conclusions

Questions 1 to 4:

It is up to the entities involved to choose a certain management model for basic social services (in terms of the LSS) and, consequently, to specify the responsibility for the processing of personal data.

However, according to the scheme set out in Legal Basis III of this opinion, in principle both the County Council and the 25 Town Councils should be given the status of responsible for the processing of data on the Diba-Hèstia platform (art. 4.7 RGPD) , which is necessary for the provision of basic social services, taking into account their respective competences (LSS).

The Provincial Council (...) would be in charge of the treatment, not only on behalf of the CC, but also on behalf of the 25 Town Councils (entities responsible for the treatment that corresponds to them in relation to the respective area of competence), and the CAOC would be sub-responsible for the treatment, as reflected in the standard agreement itself.

In view of their status as data controllers, the CC and the Town Councils should sign, respectively, the corresponding commission contracts with the Provincial Council (in charge) and the CAOC (sub-in charge).

Question 5.

It is up to the entities responsible for the processing to determine, among others, which user or professional profiles must access and process the information, and through which means it must be accessed (if applicable, through certificate digital or other media). Professionals must have access, only, to that personal information of the Diba-Hèstia platform, which is necessary and relevant for the fulfillment of the respective powers of the local body on which they depend (art. 5.1.c) RGPD).

Barcelona, May 28, 2018