

CNS 20/2019

Opinion in relation to the query made by a Trade Union Section of a town hall on the action of the municipal police in relation to the notice prior to the removal of a vehicle by the municipal crane

A request is submitted to the Catalan Data Protection Authority for an opinion from the president and delegate of a union section of a town hall, on whether the action of the municipal police in relation to the notice to the holder of a vehicle, prior to its removal by the municipal crane, would comply with data protection regulations.

Specifically, it states that when a vehicle is parked incorrectly on the public road, the municipal police must report and remove the vehicle to transfer it to the municipal depot, which entails the imposition of a penalty on the owner of the vehicle for the incorrect parking and the payment of a fee for the tow truck service when removing the vehicle from the municipal depot.

It states that it is common practice for the police officer on duty who makes the complaint to provide the command center with the vehicle's registration plate in order to locate its owner, through the means available to the municipal police (database of the General Directorate of Traffic, municipal register, white pages), so that you can remove it before it is transferred to the municipal depot by crane.

Based on these facts, the question arises as to whether the notice by the municipal police to the owner of the reported vehicle affects the protection of personal data despite being a practice favorable to the reported.

Having analyzed the query, which is not accompanied by other documentation and in accordance with the report of the Legal Adviser, I issue the following opinion:

I

(...)

II

The representative of the union section explains in his letter of inquiry whether a practice consisting in the location, through the consultation of the databases of the General Directorate of Traffic, the Municipal Register of Inhabitants and the white pages, of the person who owns a vehicle that must be removed from the public road as a result of a breach of traffic regulations, and the corresponding notice of this situation to give him the option of removing the vehicle, would comply with data protection regulations.

In accordance with article 4.1) of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD), any treatment of the data personal, understood as "any operation or set of operations carried out

on personal data or sets of personal data, whether 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 enablement of access, comparison or interconnection, limitation, suppression or destruction" (4.2 RGPD), must be subject to the principles and guarantees of the RGPD.

Article 5 of the RGPD lists the principles relating to the processing of personal data. Among these principles, and for the purposes of focusing the response to the query raised, it is necessary to take into consideration the principle of lawfulness (Article 5.1.a) RGPD) which requires that personal data be treated in a lawful, fair and transparent manner in relation to the interested party, the principle of purpose limitation (article 5.1.b) according to which the data must be collected for specific, explicit and legitimate purposes, and cannot be processed subsequently for purposes incompatible with the purposes for which have been collected, the principle of minimization (article 5.1.c) which requires that the data be adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated, and the principle of accuracy (article 5.1.d) so that the data is accurate and up-to-date.

In order for a treatment to be lawful, it is necessary to have, at least, a legal basis of those provided for in article 6.1 of the RGPD that legitimizes this treatment, either the consent of the person affected, or any of the other circumstances which provides for the same precept. In the field of public administrations, as in the case at hand, the legal bases provided for in letters c) and e) of article 6.1 of the RGPD are of particular interest, according to which the treatment will be lawful when it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment (letter c), or when the treatment is necessary for the fulfillment of a public interest or in the exercise of public powers conferred on the person responsible for the treatment (l

However, as can be seen from Article 6.3 of the RGPD, the legal basis for the treatment indicated in both cases must be established by European Union Law or by the law of the Member States that applies to the person responsible for treatment.

The referral to the legitimate basis established in accordance with the internal law of the member states requires, in the case of the Spanish State, in accordance with article 53 of the Spanish Constitution, that the rule of development, to be about a fundamental right, has the status of law.

In this regard, Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (BOE No. 294 of December 6, 2018) refers to the legal range of the enabling rule:

"Article 8. Treatment of data covered by legal obligation, public interest or exercise of public powers."

1. The processing of personal data can only be considered based on the fulfillment of a legal obligation required of the person in charge, in the terms provided for in article 6.1.c) of Regulation (EU) 2016/679, when so provided by a law of the European Union or a rule with the rank of law, which may determine the general conditions of the treatment and the types of data subject to it as well as the assignments that proceed as a consequence of the fulfillment of the legal obligation. Said rule may also impose special conditions on the treatment, such as the adoption of measures

security additions or others established in Chapter IV of Regulation (EU) 2016/679.

2. The treatment of personal data can only be considered based on the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible, in the terms provided for in article 6.1 e) of Regulation (EU) 2016/679 , when it derives from a competence attributed by a rule with the rank of law.”

It is therefore appropriate to analyze whether the treatment that is the subject of the consultation has a legitimate basis that underpins it and whether it complies with the rest of the principles established by the RGPD.

III

Article 66.3.b) of Legislative Decree 2/2003, of April 28, by which the revised Text of the Municipal and Local Government Law of Catalonia is approved, attributes to the municipalities the competence in traffic management of vehicles and people on urban roads. Likewise, Law 16/1991, of 10 July, on local police forces gives them the powers to regulate traffic (article 11.b).

For its part, the Royal Legislative Decree 6/2015, of October 30, which approves the revised text of the Law on Traffic and Circulation of Motor Vehicles and Road Safety (RDL 6/2015), establishes in the Article 7 the powers of the municipalities in this matter, in the following terms:

"Corresponds to the municipalities:

- a) The regulation, ordering, management, surveillance and discipline, by means of own agents, of the traffic on the urban roads under its ownership, as well as the reporting of infractions that are committed on said roads and the sanctioning of the same when not is expressly attributed to another Administration.
- b) The regulation, by means of a municipal traffic ordinance, of the uses of urban roads, making the equitable distribution of parking spaces among all users compatible with the necessary fluidity of road traffic and pedestrian use of the streets, as well as the establishment of limited parking measures, in order to guarantee the rotation of the parking lots, paying special attention to the needs of people with disabilities who have reduced mobility and who use vehicles, all with the aim of promoting their social integration.
- c) The immobilization of vehicles on urban roads when they do not have a title that enables parking in time-limited zones or exceed the authorization granted, until the identification of their driver is obtained.

The removal of vehicles from urban roads and their subsequent storage when they obstruct, hinder or pose a danger to traffic, or are incorrectly parked in restricted parking areas, under the conditions provided for immobilization in this same article. Bicycles may only be removed and taken away

to the corresponding deposit if they are abandoned or if, being tied up, they hinder the movement of vehicles or people or damage urban furniture.

Equally, the withdrawal of vehicles on interurban roads and their subsequent deposit, in the terms that are determined by regulation.

- d) The authorization of sporting events when they run entirely and exclusively through the urban area, except for crossings.
- e) The performance of the tests referred to in article 5.o) on urban roads, in the terms determined by regulation.
- f) The closure of urban roads when necessary.
- g) The restriction of the movement of certain vehicles on urban roads for environmental reasons."

In the case at hand, the action to be taken by the local police is a consequence of the need to remove the vehicle from the urban road. With respect to the cases in which it is legitimate for the authority's agents to order the removal of vehicles from the urban road, article 105 of the same RDL 6/2015 applies, according to which:

"1. The authority in charge of traffic management may proceed, if the person obliged to do so does not, to the removal of the vehicle from the road and its deposit in the designated place in the following cases:

- a) As long as it constitutes a danger, causes serious disturbances to the movement of vehicles or pedestrians or damages some service or public heritage. b) In the event of an accident that prevents you from continuing your journey.
- c) When, legally immobilizing the vehicle, there would be no suitable place to practice it without obstructing the movement of vehicles or people.
- d) When a vehicle is immobilized in accordance with the provisions of article 104, the causes that motivated the immobilization do not cease.
- e) When a vehicle remains parked in places authorized by the municipal authority as parking zones reserved for the use of persons with disabilities without placing the badge that authorizes it.
- f) When a vehicle remains parked in the lanes or parts of the roads reserved exclusively for traffic or for the service of certain users and in the areas reserved for loading and unloading.
- g) When a vehicle remains parked in places authorized by the municipal authority as parking with time limitations without placing the badge that

authorises, or when triple the paid time is exceeded in accordance with what is established in the municipal ordinance.

h) When they obstruct, hinder or pose a danger to traffic.

2. Except in cases of theft or other forms of use of the vehicle against the owner's will, duly justified, the expenses arising as a result of the withdrawal referred to in the previous section shall be borne by the owner, of the lessee or the regular driver, as the case may be, who must pay them as a prerequisite to the return of the vehicle, without prejudice to the right of recourse and the possibility of passing them on to the person responsible for the accident, the abandonment of the vehicle or the infringement which has given rise to the withdrawal. The agent of the authority may withdraw the vehicle's driving permit until payment of the referred expenses has been proven."

3. The Administration must communicate the withdrawal and deposit of the vehicle to the owner within twenty-four hours. The communication will be made through the Dirección Electrónica Vial, if the holder has it.

In this same sense, the Municipal Traffic Ordinance of the City Council (...), establishes that "the local Police may proceed, if the person obliged to do so does not do so, to remove the vehicle from the road and to the transfer to the municipal vehicle depot (...) whenever it constitutes a danger or causes serious disturbance to the circulation of pedestrians and/or vehicles, or to the operation of some public service, and also when it can reasonably be assumed that the abandonment on the road".

These regulations provide for the communication to the owner of the vehicle of its withdrawal and deposit at the municipal offices in section 3 of article 105 of RDL 6/2015, in accordance with which, the withdrawal must be communicated "to through the Dirección Electrónica Vial, if the owner had it available" within twenty-four hours.

Likewise, the possibility is established that, despite the infringement having occurred, the owner of the vehicle can remove it without the intervention of the municipal crane and be transferred to the municipal vehicle depot, thus paragraph 1 of article 105 establishes that "the authority in charge of traffic management may proceed, if the person obliged to do so does not, to remove the vehicle from the road" and in the same sense, the Municipal Traffic Ordinance of the City Council, foresees that the local police will be able to remove the vehicle "if the person obliged to do so does not do so".

Regarding this issue, and with regard to the payment of the fee, the mentioned municipal ordinance also provides for the possibility of the vehicle being withdrawn by its owner and specifically establishes that "the withdrawal of the vehicle will be suspended immediately if the driver appears before the crane has started moving with the vehicle attached and takes the necessary measures to put an end to the irregular situation in which it was found" (Article 28).

The powers that are attributed to the municipalities in terms of traffic ("management, vigilance and discipline, by means of their own agents, of traffic on the urban roads under their ownership, as well as the reporting of infractions committed on said roads and la sanción de las mismas" (article 7 RDL 6/2015)) would protect the performance by the local police of those actions that allow to restore normalcy in transit or circulation, as it could be in this case, the notice to owner of the incorrectly parked vehicle for its voluntary withdrawal.

This action would be in line with the basic principles of action of the local police that, in terms of relations with the community, established in article 10 of Law 16/1991, of July 10, on the local police, according to which they must seek, among others:

"b) Have at all times a correct and accurate treatment with the citizens, whom they must try to assist and protect whenever the circumstances advise or are required, and provide them with complete and as extensive information as possible about the causes and the purpose of all interventions.

c) To act, in the exercise of their functions, with the necessary decision and without delay, when it depends on this to avoid serious, immediate and irreparable harm, and to be governed, in doing so, by the principles of congruence, d 'opportunity and proportionality in the use of the means at their di

In short, it could be understood that the notice to the owner of the vehicle for its withdrawal would be legitimate in the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment in accordance with article 6.1.e) of the RGPD. This mission in the public interest would be foreseen in the powers that the local police officers have over traffic in accordance with RDL 6/2015 and Law 16/1991, of the local police, previously transcribed.

It cannot be ignored that this action by the municipal police is producing a benefit to the owner of the vehicle, who is allowed by traffic regulations to remove the vehicle before the municipal crane intervenes and it is transferred to the municipal vehicle depot (article 105.1 RDL 6/2015), but which he will hardly be able to carry out if he is not notified of this circumstance.

However, the rest of the principles of the RGPD apply to this data processing, and consequently, it is necessary to determine which of the data available to the local police could be used to notify the owner of the vehicle.

IV

According to the query, the location of the owner of the vehicle would be carried out, based on the vehicle's registration plate, through the means available to the local police, and states as such, the database of the General Directorate of Traffic, the municipal register and the white pages.

The General Directorate of Traffic manages the Register of Vehicles and the Register of drivers and offenders.

Article 2 of Royal Decree 2822/1998, of December 23, approving the Regulation General of Vehicles (RGV), regulates the Vehicle Registry in the following terms:

"Article 2. Vehicle Registration.

1. The Central Traffic Office will keep a Register of all registered vehicles, which will adopt computerized means for its operation and which will include, at least, the data that must be entered in the driving permit or license, as well as how many vicissitudes later suffer those or their ownership.

It will preferably be aimed at the identification of the owner of the vehicle, the knowledge of its technical characteristics and its ability to drive, the verification of the inspections carried out, the compulsory car insurance arranged and the fulfillment of other legal obligations, to ascertain the Vehicle Park and its distribution, and for other statistical purposes.

The Vehicle Registry will have a purely administrative character, it will be public to interested parties and third parties who have a legitimate and direct interest, by means of simple informational notes or certifications, and the data that appear in it will not prejudge questions of ownership, fulfillment of contracts and, in general, how many of a civil or commercial nature can be raised regarding the vehicles.

It will also have a supporting function for the different public administrations, judicial bodies and civil or commercial registries with which it is related.

The functioning of the Register, the form and effects of its annotations, as well as the scope of its publicity will also be adjusted to the regulations contained in annex I.

2. In addition to the Registry referred to in the previous section, other special or auxiliary Registries may be organized for the different temporary authorizations for circulation, such as those for temporary permits for individuals and for use by companies or entities related to the vehicle."

This register must include the data that must be included in the permit or driving license, as well as those events that occur with respect to the vehicles and their ownership.

With regard to the data that must be included in the driving permit or license, article 29 of the RGV establishes that "The driving permit and the driving license shall conform, in terms of their model and content, to what is indicated in Annex XIII". In point 2 of the aforementioned Annex XIII, it is determined that the circulation permit must contain the following data:

"2. The circulation permit will have the following data: The mention "KINGDOM OF SPAIN".

The letter E as a distinctive sign of the Spanish State. The mention Ministry of the Interior. General Directorate of Traffic. The mention "PERMISO DE CIRCULACIÓN" printed in large characters. It will also appear in small characters, after adequate space, in the other languages of the European Community. The mention "EUROPEAN COMMUNITY". The serial number of the document.

A-Registration number.

B-Date of first registration.

C.1.1 Surnames or company name.

C.1.2 Number.

C.1.3 Domicile.

C.4 c) He is not identified on the driving license as the owner of the vehicle.

D.1 Brand.

D.2 Type/Variant/Version (if applicable).

D.3 Trade name.

(D.4) Service to which it is intended.

E - Identification number.

F.1 Technically permissible maximum mass in cargo (in kg) (except for motorcycles).

F.2 Maximum permissible mass of the vehicle in circulation in Spain (in kg).

G-Mass of the vehicle in service with bodywork, and with coupling device if it is a tractor vehicle of a category other than M1 (in kg).

H-Period of validity of the registration, if not unlimited.

I-Date of registration to which this permit refers.

(I.1) Date of dispatch.

(I.2) Place of dispatch.

K - Approval number (if applicable).

P.1 Displacement (in cm³).

P.2 Maximum net power (in kW) (if applicable).

P.3 Type of fuel or energy source.

Q-Power/weight ratio (in kW/kg) (only for motorcycles).

S.1 Number of seats, including the driver's seat.

S.2 Number of standing places (if applicable).

According to this regulation, the vehicle register is the place where the data of all registered vehicles is recorded and has, as a preferred purpose, among other more specific ones relating to the characteristics of the vehicle, the identification of its owner (article 2.1).

As explained, article 5.1.b) of the RGPD establishes that personal data will be "collected for specific, explicit and legitimate purposes, and will not be subsequently processed in a manner incompatible with said purposes; in accordance with article 89, paragraph 1, the further processing of personal data for archival purposes in the public interest, scientific and historical research purposes or statistical purposes will not be considered incompatible with the initial purposes ("limitation of purpose").

Regarding this, recital 50 of the RGPD provides that:

"The processing of personal data with purposes different from those for which they were initially collected must only be allowed when it is compatible with the purposes of their initial collection. In such a case, a separate legal basis is not required, other than the one that allowed the personal data to be obtained. If the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment, the tasks and purposes for which the subsequent treatment should be considered compatible and lawful can be determined and specified in accordance with the Law of the Union or of the Member States. Subsequent processing operations for archival purposes in the public interest, scientific and historical research purposes or statistical purposes must be considered compatible lawful processing operations. The legal basis established in the Law of the Union or of the Member States for the treatment of personal data can also serve as the legal basis for the subsequent treatment. In order to determine whether the purpose of the subsequent treatment is compatible with the purpose of the initial collection of personal data, the person responsible for the treatment, after having fulfilled all the requirements for the authorization of the original treatment, must take into account, among other things, any relationship between these purposes and the purposes of the

that the data were collected, in particular the reasonable expectations of the interested party based on their relationship with the person in charge regarding their subsequent use, the nature of the personal data, the consequences for the interested parties of the subsequent treatment envisaged and the existence of adequate guarantees both in the original treatment operation and in the planned subsequent treatment operation. (...).”

In the case at hand, the consultation of the Vehicle Registry by the municipal police to identify the owner of the incorrectly parked vehicle, based on the license plate, would respect the principle of purpose limitation since the data that appear in this register have been collected for the same purpose for which they will be used by the municipal police.

On the other hand, RDL 6/2015 regulates the domicile and the road electronic address as the place where to make notifications to the holder of the authorizations regulated in that rule, and specifically the road electronic address is determined as the place to make any notice or incidence in this respect, so this article establishes:

"Article 60. Address and Electronic Road Address (DEV).

1. The holder of a permit or driver's license or of a vehicle's circulation permit will notify the records of the autonomous body Jefatura Central de Tráfico of their address. This will be used to make notifications regarding all the authorizations you have. To this effect, the town councils and the State Agency for Tax Administration may communicate to the autonomous body the Central Traffic Office the new addresses of which they have evidence.

2. In the history of each vehicle, an address may also be entered for the sole purpose of managing the taxes related to it.

3. Without prejudice to what is provided in section 1, the autonomous body Central Traffic Authority will also assign to every holder of a permit or driving license or the circulation permit of a vehicle, and prior to its obtaining, an Address Road Electronics (DEV). This address will be automatically assigned to all the authorizations that the holder has in the Registers of Vehicles and of Drivers and Offenders of the autonomous body Jefatura Central de Trafico.

4. The assignment of the Electronic Road Direction (DEV) will also be made to the long-term lessee listed in the Vehicle Registry of the autonomous body Central Traffic Directorate, prior to its inclusion.

5. Notwithstanding the provisions in the previous sections, if the holder of the authorization is a natural person, he will only be assigned an Electronic Road Address (DEV) when he voluntarily requests it. In this case, all notifications will be made in the Electronic Road Directorate as established in article 90, without prejudice to the regulations on electronic access of citizens to public services.

6. In the Dirección Electrónica Vial (DEV) the notices and incidences related to the administrative authorizations collected in this law will also be practiced.

It is also foreseen that local administrations can make notifications to the road electronic address as established by the second transitional provision of RDL 6/2015.

In short, in view of this regulation, it can be concluded that the consultation and use by the local police of the identification data, of the address and, if applicable, of the street electronic address (DEV) of the holders of the administrative authorizations regulated by RDL 6/2015, for the purpose of the consultation, would respect the principle of limitation of the purpose of the treatment of article 5.1.b) of the RGPD.

V

With regard to the use of data from the register for the execution of the notice referred to in the query, reference must be made to Law 7/1985, of April 2, regulating the bases of the local regime (hereafter, LRBRL).

Article 16.1 of this law defines the Municipal Register in the following terms:

"1. The municipal register is the administrative register containing the residents of a municipality. Your data constitutes proof of residence in the municipality and of habitual residence in the same. The certifications that are issued of said data will have the character of a public and binding document for all administrative purposes. (...)".

The LRBRL (and, in the same sense, the revised Text of the Municipal and Local Regime Law of Catalonia, approved by Legislative Decree 2/2003, of April 28) establishes the obligation of all residents to register in the Register of the municipality where you have established your residence with a triple purpose: to determine the population of a municipality, to be required to acquire the status of resident and to serve as proof of residence and habitual residence (articles 15 and 16 LRBRL).

Royal Decree 1690/1986, of July 11, approving the Population and Demarcation Regulations Territorial de les Entitat Locals (RPDTEL) foresees that the Municipal Register will contain the following data as mandatory: first and last name, sex, usual address, nationality, date and place of birth, identity document number (or, for foreigners, residence card or identity document number), certificate or school or academic degree, and, finally, any data that may be necessary for the preparation of the electoral census, provided that fundamental rights are respected. It is also foreseen that, on a voluntary basis, it can collect the designation of the people who can represent each neighbor before the administration and the telephone number (article 57 RPDTEL).

In this sense, the "Resolution of March 16, 2015, of the Undersecretariat, by which the Resolution of January 30, 2015, of the Presidency of the National Institute of Statistics and of the Directorate General of Competence Coordination with the Autonomous Communities and Local Entities, on technical instructions to the Town Councils on the management of the municipal register" makes a clarification in relation to voluntary data, in the following sense: "For

For its part, article 57 of the aforementioned Regulation, in section 2, establishes the data that may also be collected voluntarily, with the understanding that section b) also makes it possible to request the mobile phone number.”

As we have seen, the Municipal Register of Inhabitants has a very specific purpose: to determine the population of the municipality, to be required to acquire the status of resident and serve to accredit residence and habitual address (Article 15 LRBRL).

In accordance with the principle of purpose limitation (article 5.1.b) RGPD), the data of the Municipal Register may only be used for other purposes to the extent that they are not incompatible with this triple purpose that justifies its collection initial.

In the present case, it is intended to use the data from the Register to inform the owner of a vehicle that it will be removed from the public road by the municipal crane. It must be seen, therefore, whether this purpose is compatible with the Padró's own.

Article 6.4 of the RGPD establishes that:

"4. When the treatment for a purpose other than that for which the personal data was collected is not based on the consent of the interested party or on the Law of the Union or of the Member States that constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives indicated in article 23, paragraph 1, the person responsible for the treatment, in order to determine whether the treatment with another purpose is compatible with the purpose for which the personal data was initially collected, will take into account, among other things: a) any relationship between the purposes for which the personal data have been collected and the purposes of the subsequent treatment provided; b) the context in which the personal data have been collected, in particular with regard to the relationship between the interested parties and the controller; c) the nature of personal data, in particular when special categories of personal data are treated, in accordance with article 9, or personal data relating to criminal convictions and infractions, in accordance with article 10; d) the possible consequences for the interested parties of the planned subsequent treatment; e) the existence of adequate guarantees, which may include encryption or pseudonymization.”

On this issue, it must be said that this Authority, in previous opinions (among others, CNS 9/2013, CNS 67/2015, CNS 46/2016, CNS 39/2018 and, specifically for the use of the local police of municipality in CNS 35/2011, available on the website <http://apdcat.gencat.cat>), has considered that, in view of the type of personal data that must be included in the Register (article 16.2 LRBRL), understands that there may be municipal purposes that could enable the processing of this data to the extent that they are not incompatible with the Padró's own, previously described.

It has also been noted in the aforementioned opinions that, given that the LRBRL itself (article 16.3) admits the communication of data from the Municipal Register to other public administrations that request them when they are necessary for the exercise of their competences and exclusively for matters in which residence or domicile are relevant data, with greater reason it can be admitted that the different units or administrative bodies of the same municipality can

access these data when they are necessary for the exercise of their functions and when the given residence or address is relevant.

In the case at hand, the analysis of the criteria established in article 6.4 of the RGPD in order to determine whether the purpose of further processing is compatible with the purpose for which the data of the register have been collected, we can lead to the conclusion that this compatibility w

Thus, as we have seen, in the technical instructions to the Town Councils on the management of the register carried out by the National Institute of Statistics, it is stated that the telephone data also includes the mobile phone and is part of the data that the person who is registered in the register can provide voluntarily. The fact that the citizen voluntarily provides this data entails a reasonable expectation of its use by the local administration in the exercise of its powers, which would base the compatibility for its treatment by application of the weighting criterion provided for in the letter b) of article 6.4 of the RGPD "the context in which the personal data have been collected, in particular with regard to the relationship between the interested parties and the controller".

In addition, the data that must be processed are solely identification and contract data of the owners of the vehicles, therefore, in no case would it be special categories of personal data, in the sense provided for in letter c) of I "article 6.4 of the RGPD "c) the nature of personal data, in particular when special categories of personal data are treated, in accordance with article 9, or personal data relating to criminal convictions and infractions, in accordance with article 10;"

On the other hand, according to what is stated in the consultation, no harmful consequences for the interested parties are foreseen as a result of this further processing of the data, but, as has been explained, with this action of the police municipal is producing a benefit to the owner of the vehicle (who is allowed by the traffic regulations to withdraw the vehicle before it is transferred to the municipal depot) in such a way that this treatment allows him to be aware of this eventuality.

To the extent that the reasons for which the local police would access the data of the Register correspond to the performance of their functions included in the exercise of the municipal powers provided for in the local regime legislation, such as the regulation of vehicle traffic and of people on the urban roads provided for in article 66.3.b) of the Municipal and Local Regime Law of Catalonia, the requested access to personal information can be understood as legitimate when it is for purposes compatible with that of the Municipal Register of Inhabitants.

Therefore, when access is necessary for the exercise of the administrative police functions attributed to them by Law 16/1991, of July 10, on the local police of Catalonia (article 11.d), it could be understood legitimate access, both to the own register and, if applicable, to the register of other municipalities (article 16.3 LBRL), as it is a purpose compatible with that provided for the Municipal Register of Inhabitants and in the insofar as residence data is relevant.

It should be borne in mind that, in application of the principle of data minimization (Article 5.1.c) RGPD), the personal data to which you have access must be limited to those that are appropriate, relevant, and limited to those that are strictly necessary to comply with the purpose for which they have been requested.

In the case at hand, it would seem that the relevant data for the purposes of being able to quickly contact the owner of the vehicle would be the telephone data, although we cannot rule out cases in which the data relating to the address could also be used with this purpose.

VI

Finally, the consultation considers the use of the data contained in the white pages.

Law 9/2014, of May 9, general telecommunications, establishes among the public service obligations of telephone operators, to make available to subscribers to the telephone service available to the public "a general guide of subscriber numbers, either printed or electronic, or both, which is updated at least once a year (...)" (art. 25.1.c). This obligation is configured as a universal service, in such a way that its provision must be guaranteed for all end users regardless of their geographical location.

Likewise, Royal Decree 424/2005, of April 15, which approves the Regulation on the conditions for the provision of electronic communications services, the universal service and the protection of users, dedicates its article 30 to the regulation of telephone directories. This article establishes the right of subscribers to the telephone service available to the public to have a general printed guide of subscriber numbers that is updated, at least once a year and in which they must appear, at least, the information relating to the name and surname or company name, the subscriber number, the postal address of the home (except floor, letter and scale) and

According to this regulation, the existence of telephone directories is included in the public service obligations of the operators and constitutes a right of subscribers to the telephone service. Therefore, if telephone directories must be available and accessible for public use and can be used by anyone to know the number of subscribers, with more reason they must be able to be used by the municipal police in the exercise of their functions.

It should be taken into account that, although the old LOPD established a specific authorization to process data obtained from sources accessible to the public, such as telephone directories, the RGPD does not provide for this authorization, and the subsequent processing of data from 'these sources of data must have a legitimate basis from those established by a

In the case we are concerned with, the authorization for the subsequent processing of the data obtained from the telephone directories is given, as we have seen, by letter e) of article 6.1 of the RGPD since the processing is necessary for to the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the data controller.

In accordance with the considerations made in these legal foundations in relation to the query raised, the following are made,

Conclusions

The use by the municipal police of the data contained in the General Directorate of Traffic, in the Municipal Register of Inhabitants and in the white pages, for the notice to the owner of a vehicle, prior to its removal for the municipal crane, it would comply with data protection regulations.

Barcelona, May 14, 2019

Machine Translated