CNS 47/2019

Opinion in relation to the consultation of a City Council on the document of consent for the processing of data in a European Research Project

A letter from a City Council is presented to the Catalan Data Protection Authority regarding the processing of personal data following the City Council's participation in a European research project in which, according to the consultation, voluntary participation is foreseen and anonymous of the citizens.

The consultation is accompanied by a copy of the document "(...)" (hereafter, "Document 9.1"), which includes, among others, general information about the project, a copy of the "Consent form (...)" (document A.7), and the "Informative sheet for the collection of data (...)" (document A.8), in several languages, covering the different countries that would participate in the project.

According to the consultation, the European Union would have asked the participants in the project (the partners of the Project consortium) that the corresponding Data Protection Authorities "confirm that the text complies with the regulations on data protection".

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

I

(...)

II

The consultation explains that the City Council is part of the European Research Project, financed by the European Union, together with other partners from different European countries.

According to the consultation, the project's mission is to create tools and solutions for inclusive spaces that adapt emotionally, aesthetically and with social responsibility to their users, creating an architectural design that is attractive from a point of view functional and emotional. The consultation adds that during the project "a series of actions will be developed that will ask for the voluntary and anonymous participation of citizens, and for this reason a data consent sheet has been drawn up".

(...).

The consultation is accompanied by the document "(...)" (hereinafter, the "General Document"), which includes general information about the project, as well as an Appendix that incorporates the document: "A.7 : Preliminary draft of the consent sheet for the collection of sensor data", and the document "A.8: Information sheet for the collection of data". The Appendix includes the versions of these same documents A.7 and A.8 in other languages (English, French, Spanish and Greek).

We agree that the General Document refers to other documents related to the project, specifically, the "Grant Agreement" and "Consortium Agreement" documents, as well as the "D1. 2, Date

Management and self-assessment plan V1", which do not accompany the consultation and, therefore, the content is unknown.

From the information available on the project website, it appears that a total of 14 partners ("partners") from seven countries (six European Union countries - Spain, France, United Kingdom, Netherlands, Germany) are part of the Project Consortium and Greece-, and also Hong Kong).

The consultation explains that the consent form would have been prepared by the French partner of the project, which has the same content for all partners, and that the European Union requests that the Data Protection Authorities "confirm that the text complies with the data protection regulations".

Based on the query in these terms, according to article 4.1 of Regulation (EU) 2016/679, of April 27, general data protection (RGPD), personal data is "all information about an identified natural person or identifiable ("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;

The processing of data (art. 4.2 RGPD) of natural persons who may participate in the project, object of consultation, is subject to the principles and guarantees of the personal data protection regulations (RGPD, and Organic Law 3/2018 , of December 5, of protection of personal data and guarantee of digital rights (LOPDGDD)).

It is necessary to take into account the principle of privacy by design (art. 25.1 RGPD), according to which:

> **"Taking into account the state of the art, the cost of the application and the nature, scope, context and purposes of the treatment, as well as the risks of varying probability and severity that the treatment entails for the rights and freedoms of physical persons, The person in charge of the treatment will apply, both when determining the means of treatment and at the time of the treatment itself, appropriate technical and organizational measures, such as pseudonymization, designed to effectively apply the principles of data protection, such as the minimization of data, and integrate the necessary guarantees in the treatment, in order to comply with the requirements of this Regulation and protect the rights of those interested."**

Given that the case examined refers to data processing for the purpose of scientific research, it should be borne in mind that, according to Article 89 of the RGPD:

> **"1. The treatment for archival purposes in the public interest, scientific or historical research purposes or statistical purposes will be subject to adequate guarantees, in accordance with this Regulation, for the rights and liberties of the interested parties. These guarantees will require that technical and organizational measures are available, in particular to guarantee respect for the principle of minimization of personal data. Such measures may include pseudonymization, provided that in that way said ends can be achieved.**
> **As long as those purposes can be achieved through further processing that does not allow or no longer allows the identification of the interested parties, those purposes will be achieved in that way.**
>
> **(...).”**

In relation to the processing of personal data that may arise from the project, the person in charge or persons in charge must have previously determined a series of issues (compliance with the principle of legality of the treatment and basis enabling the treatment, type of personal information processed , information flows, possible uses of personal information, conservation, technical and organizational measures to apply, among others). All this, before the treatment begins and without prejudice to the fact that the affected subjects must be informed of the treatment of their data through the corresponding clause, in the terms required by the RGPD.

Taking this into account, it is clear that the content of the consent sheet and the information sheet (documents A.7 and A.8, respectively), attached, cannot be analyzed in isolation without taking into account other aspects that the regulations provide for and demands its compliance with all the principles and guarantees of the data protection regulations.

Therefore, it is necessary to agree on several issues relating to the processing of personal data that the project would involve, from the perspective of the principles and guarantees of the personal data protection regulations, some of which must then be reflected in the text of the clauses to which the query refers (A.7 and A.8).

III

Description of the project and type of data to be treated.

The available documentation explains that the research project subject to consultation foresees the participation of natural persons in three pilot tests, which will be carried out in different environments. Specifically, in open spaces in the city, in workplaces and inside homes, respectively.

According to the information available, the three pilot tests will deal with "physiological data" (such as heart rate, electrocardiograms, or Galvanic skin response (GSR), images captured with video cameras, as well as, in pilot test 3, information from interviews, and also information from networks social media and the Internet (collection of "textual and visual content freely available from websites and social media", according to section 1.5 of the General Document).

In summary, according to the available information, the three pilot tests will consist of the following:

- Pilot test 1:

Regarding the objective of the research, according to the Catalan translation of the Information Sheet (A.8): "The video recordings of the behavior of individuals, alone or in groups/crowds, in the design spaces proposed will provide valid indicators regarding the responses of these users. The video recordings of the end users navigating the project's facilities will make it possible to objectively assess the functionality of the designs (...)."

According to the same document, to carry out this pilot test: "a temporary network of video cameras will be located in order to carry out a visual analysis of user behavior. The City Council (...) will be responsible for controlling these cameras, which will only be active to record users for the duration of the project. (...)."

Pilot test 1 will also involve the "collection of data from physiological sensors". Thus, "the installations proposed in relation to the public spaces under study will be loaded and represented in a virtual reality (VR) environment. Data collection of physiological signals will be carried out in a laboratory (controlled environment) (...).".

Therefore, the City Council that formulates the query would be directly involved, as the entity that must control the cameras in the data processing of pilot test 1.

- Pilot test 2:

According to the Information Sheet (A.8): "in order to address the design of workspaces, recordings will be obtained from video cameras and RGB-D cameras. Recordings of groups of people and individuals will be collected in order to examine social interaction, detect trajectories and recognize and classify activities. The video recordings will make it possible to identify the most attractive spaces, the time people spend in certain areas, potential obstacles, etc. (...)." In pilot test 2 it is also planned to "collect data from physiological signals in the project facilities (...)", in terms similar to those referred to for pilot test 1.

From the information available, pilot test 2 would be conducted in the UK. However, the available information does not rule out that this pilot test will also be carried out in Spain (point 2.1 General document), although beyond this mention there is no concreteness in this regard.

- Pilot test 3:

According to the same document (A.8), "an association for elderly people (...), will ask elderly people to participate with the aim of making emotionally and functionally friendly redesigns for elderly people. (...). Video cameras will be placed in the home to record daily activities. (...). To address privacy and data control concerns, audio will be explicitly excluded. (...)." "Physiological signals for the extraction of emotions" will also be collected.

According to the Information Sheet (A.8), in pilot tests 1 and 2, the "Collection of data from social networks" is also planned. Thus, it is planned to collect "public content online from social networks", and it is added that "it is imperative to anonymize each entry at a later stage, although only messages with public visibility will be tracked. The main goal is to receive text content and textual analysis to understand the relationship between emotions, human behaviors and design parameters to design better spaces."

In pilot test 3, it is not planned to collect data from social networks but through conducting interviews with the elderly people who participate.

With regard to the natural persons affected, according to the section "2.1 Test subject profiles" of the General Document: "(...), all participants must be of legal age and are considered non-vulnerable. In France, the target group is self-employed elderly people between 60 and 85 years old, in the United Kingdom, the target group would be workers of an architecture company and in Spain the citizens of the city (...) are considered target groups potentials In Greece we may have a mixed group of seniors, workers and citizens. Workers could also be considered a target group in Spain."

Regarding the type of personal data that will be processed, from the available information it seems clear that identifying data of the participating subjects will be processed

(among others, the image of these people), data obtained from social networks and interviews, as well as other categories of data that could be specially protected (art. 9 RGPD). In this sense, the "physiological data" (heart rate, electrocardiograms, etc.), to which the available documentation refers, could provide information on the health of the people affected. According to article 4.15 of the RGPD, they are health data: "data relating to the physical or mental health of a natural person, including the provision of health care services, which reveal information about their state of health."

It should be noted that special category data, such as health data, and also others that can be obtained from social networks or interviews, relating to different aspects of the affected persons that are special category information, are subject to the special protection regime of article 9 of the RGPD, and which in principle cannot be the subject of treatment (art. 9.1 RGPD), unless one of the circumstances of article 9.2 RGPD occurs, which enable the treatment.

In principle, in order to process this data of the affected persons, it is necessary that they have given their explicit consent or one of the exceptions in article 9.2 of the RGPD.

IV

The data protection regulations (art. 5.1.a) RGPD) establish that personal data must be treated lawfully, loyally and transparently in relation to the interested party (principle of legality, loyalty and transparency).

Taking into account the principle of transparency, and given the description of the project, it is appropriate to highlight some issues that are decisive from the perspective of the protection of personal data and which, as we can move forward, are not clear enough, at least in attention to available information.

1) Determination of responsibility or, where applicable, co-responsibility for the treatment

The data protection regulations establish that it is necessary to determine the natural or legal person responsible for the treatment (art. 4.7 RGPD), on which falls the obligation to comply with these regulations. The regulations also provide for the possibility of establishing co-responsibility for the treatment, that is, for two or more responsible parties to jointly determine the objectives and means of the treatment (art. 4.7 and art. 26 RGPD and art. 29 LOPDGDD).

The General Document (point 2.2) explains that data will be collected from people in France, Spain and the United Kingdom, and adds that CERTH - Greece's research center - will collect data to test and calibrate the sensor devices. According to this point 2 of the General Document, the coordinator of the project is the CERTH, without this necessarily implying its status as responsible (art. 4.7 RGPD). On the other hand, in the document "(...)", available on the project's website, different references are made to the "responsible partners" for analyzing the information (CERTH, and two E

According to the information available (point 1.4 of the General Document), "each participant (referring to the participating partners) supervises and checks that all research work is carried out in accordance with the indications and methodology of this document", and adds that this applies to "all data collection procedures in relation to the subjects, which may be internal or external to the project consortium (the participants)", so that data processing by third parties cannot be ruled out external or unrelated to the project's partners, a matter that needs to be specified for the purposes o

In the event that an external collaborator of the project has to act as a data controller (art. 4.8 RGPD), based on the instructions given by the data controller(s) - an issue that is unknown given the information available - , it will be necessary for the person or persons responsible to have complied with the provisions of article 28 of the RGPD, to which we refer. Equally confusing are the mentions of other partners (...), who are cited in the aforementioned terms, without specifying what their responsibility is.

In the event that a co-responsibility model is established, the RGPD requires the signature of an agreement that clearly determines the respective functions and relationships of the co-responsible parties in relation to the interested parties, who must know the essential aspects of the agreement (art. 26 GDPR). In the event that those models are chosen in relation to the project, those responsible must establish said agreement and inform those affected.

In any case, the information available does not allow us to know with sufficient clarity what is the model of responsibility or co-responsibility that the partners of the project have established with respect to the different data treatments planned.

From the perspective of data protection, given the responsibility that falls on those responsible when designing and managing data processing, it is essential that this scheme has been specified beforehand at the start of processing, and that clearly inform those affected. Otherwise, it will be difficult to provide information to those affected that meets the requirements of data protection regulations.

Therefore, given the various mentions made throughout the General Document, from the perspective of data protection it is necessary to specify and clearly set out the responsibility scheme for all the treatments derived from the project, for the purposes of principles of legality, loyalty and transparency (art. 5.1.a) RGPD), and the rest of the principles provided for in article 5.1 RGPD.

2) Information flows

The definition of the responsibility model affects other issues that privacy by design would require to be clearly established, such as the information flows that can occur within the framework of the project.

Consent Form A.7 includes a general clause according to which: "The data will be protected according to the General Data Protection Regulation (EU) 2016/679 ("RGPD"). All data will be stored securely on CERTH servers, encrypted and password protected. They will only be accessible by project partners."

It would be appropriate to correctly cite the data protection regulations (General Data Protection Regulation). Having said that, it seems that the project would have foreseen that all the partners of the project could have access to all the personal information collected and processed, without further details about it depending on the greater or lesser involvement of the partners in the pilot tests.

From the perspective of the principles of data protection (principles of legality and loyalty, and also the principle of minimization (art. 5.1.c) RGPD)), it should be noted that, given the different role of the 14 partners of the project consortium (three of which seem to lead the three pilot tests; one or more partners coordinate the project; with respect to the other partners, it is unknown if they have any participation in the collection and processing of the data), the mentions of a general access to the entire personal information processed by any of the partners, may not conform to the principles and guarantees of data protection.

Thus, as an example, it does not seem that a partner responsible for one of the three pilot tests should have the same access to the set of treated data and do the same treatment as the rest of the 14 partners of the project which, although participates in it and will need to have access to certain information (mainly the results of the study, in large part, information that may be aggregated or anonymized, depending on the information available), probably will not need to have the same access to data from all participants in the three tests.

Therefore, the person(s) responsible for the project should specify the information flows between the various stakeholders taking into account the principles and guarantees of data protection, especially from the perspective of the principle of minimization and establishing the necessary security measures following the corresponding previous risk analysis, to which we will refer later.

3) International data transfers (TID)

Section 4 of the General Document "Legal principles" refers, among others, to Commission Decision 2000/520/EC of July 26, 2000, pursuant to Directive 95/46/EC, on the principles of Port Segur (Safe Harbour), which is not in force.

It will be necessary to take into account, if applicable, the agreement relating to the "EU-US Privacy Shield" (Privacy shield), in force since July 12, 2016, which replaces the previous "US EU Safe Harbor" agreement (annulled by the STJUE of October 6, 2015), and which recognizes an adequate level of security to the affiliated entities. At the link https://www.privacyshield.gov/ list you can consult a list with the entities adhering to the Privacy shield.

In any case, it follows from the mention in the Safe Harbor regulations that the project would provide for the international transfer of data (TID), in the United States, a matter that should be clarified and reviewed taking into account the Privacy shield.

Document A.7 refers to "All research data will be stored securely on CERTH servers and will be shared among partners using the document management system (...), and the sharing of information among the project partners.

Regardless of where each partner is based (in principle, mostly EU countries), the processing or part of the processing of the affected data (for example, the storage of information) may involve "cloud storage" . When a person in charge uses "cloud storage" systems outside the European Union, or simply when the servers where the data will be stored are located outside the territorial scope of application of the RGPD, we will be faced with a transfer international data (TID), which will be subject to the regime provided for in articles 44 to 50 of the RGPD.

Article 44 of the RGPD establishes that:

> **"Only transfers of personal data that are the object of treatment or will be after their transfer to a third country or international organization will be carried out if, subject to the other provisions of this Regulation, the person in charge and the person in charge of the treatment meet the established conditions in this chapter, including those relating to subsequent transfers of personal data from the third country or international organization to another third country or other international organization. All the provisions of this chapter will be applied in order to ensure that the level of protection of natural persons guaranteed by this Regulation is not undermined."**

Thus, the RGPD provides that the EU Commission can decide that a third country, a territory or one or several specific sectors of a country, guarantees an adequate level of protection (art. 45 In the absence of this adequacy decision by the Commission, the entity responsible could only transmit personal data to a third country if it offers adequate guarantees and the interested parties have enforceable rights and effective legal actions (art. 46 RGPD) or any of the exceptions provided for in art. 49 GDPR. It should be borne in mind that the mechanisms established by the RGPD in order to consider that adequate guarantees are offered are various – binding corporate rules (BCR), standard clauses, authorization from the control authority, codes of conduct, mechanisms of certification, etc. (art. 46 RGPD).

In short, in the event that as a result of the project TIDs are to be produced, the person responsible or persons responsible for the project must comply with the requirements established by the regulations regarding this type of information flow (arts. 44 et seq. RGPD and, with regard to the treatment for which the City Council or other partners in Spain may be responsible, articles 40 et seq. LOPDGDD).

4) Security

In the "Data Protection" section (Document A.7) the following is provided: "The data will be protected according to the General Data Protection Regulation (EU) 2016/679 ("RGPD"). All data will be stored securely on CERTH servers, encrypted and password protected. They will only be accessible by project partners."

The RGPD does not establish any list based on the basic, medium and high levels of security, as provided for in the Deployment Regulation of the previous Organic Law 15/1999, on data protection, but is based on a prior analysis of the risks, it is necessary to determine which technical and organizational security measures appropriate to the risk, which will have to be implemented in each case (recitals 83 and 84, article 24.1 and article 32 RGPD).

From an information security point of view, a risk analysis requires identifying threats (for example, unauthorized access to personal data), assessing how likely this is to occur and the impact it would have on the people affected. The type of risk and, in short, its probability and severity, varies according to the types of treatment, the nature of the data being treated, the number of people affected, the amount and variety of treatments, the technologies used, etc.

It is therefore necessary that the person(s) responsible have carried out a risk analysis in the terms required by the RGPD.

5) Pseudonymization of data

In relation to the processing of data in the field of scientific research, the regulations provide that the security measures must guarantee the principle of minimization and may include, among others, the pseudonymisation of the personal information processed (art. 89 RGPD, and considering 156 RGPD).

For the purposes of data protection, it is appropriate to differentiate between information that allows the direct or indirect identification of natural persons ("personal data"), from "pseudonymized" information, i.e. that which only allows the affected subject to be re-identified in through additional information (According to article 4.5 of the RGPD, it is necessary to understand by pseudonymization: "the treatment of personal data in such a way that they can no longer be attributed to an interested party without using additional information, provided that said additional information appears by separate and is subject to technical and organizational measures designed to ensure that personal data is not attributed to one

identified or identifiable natural person;"). Both personal data and pseudonymized data (consideration 26 RGPD) are subject to data protection regulations.

This must be distinguished from "anonymous" information (that which has lost all direct or indirect connection with the natural person -or that has no longer had it since it was obtained-, so that those affected are no longer identifiable without effort disproportionate), as data protection principles and guarantees do not apply to anonymous information.

At some points in the General Document the information is confusing, or even appears to be incorrect. For example, in pilot test 1 it seems that it is expected that the information captured with the cameras would be anonymous (it is expected that "individual and identifying characteristics" will not be obtained), although, as we will explain later, it cannot be ruled out that the cameras allow people to be identified, so that the information would not be anonymous, as it seems to be pointed out (section 1.5 General document, or also in document A.7, regarding pilot test 1, in which the participant consents to "the anonymous video and image capture of your external environment by recording movements and interactions"). If the information captured is "anonymous", as data protection regulations do not apply, the consent of those affected would not eve

Therefore, given that the application or not of the data protection regulations depends on whether personal data is treated, it is appropriate, at the outset, that the General Document be clear with the use of the concepts of personal information, pseudonymized information, anonymized or coded, and of anonymous information, which pertains in each case.

Having said that, it must be noted that the use of the pseudonymization mechanism should already be fixed and defined before starting the treatment, and the available information does not allow us to confirm that this is the case, since section 4. ("Legal principles") of the General Document provides that: "The Consortium will examine whether anonymization is an appropriate way to process personal data. Otherwise, other means of complying with the GDPR will be explored."

This has not allowed this Authority to verify whether or not pseudonymization/ anonymization is or is not the mechanism that will be effectively applied to the development of the project, in short, whether the project will use it or whether it will opt for other alternative measures, which also do not are explained in the project.

Those responsible must determine already in the design of the project and in the corresponding risk analysis, whether to opt for pseudonymization or anonymization, and under what terms (who will carry it out, for what treatments, if the shared information will be pseudonymized or not, and in what way, etc.), so that the various pilot tests comply with the requirements of the RGPD (principle of proactive responsibility, e.g. art. 5.2 RGPD).

Therefore, the lack of definition regarding the application or not (and in what terms) of the guarantee implied by pseudonymization or anonymization, does not allow to determine whether or not the project conforms to the principles of data protection, at this point .

Finally, at a formal level we note that the wording of the sentence: "For the rest of the data, no personal data will be deducted from the participants who are not responsible for a research team" (point "Confidentiality and anonymity" of document A .7) does not match the Spanish version of the same document, which seems more correct ("For the rest of the data, no personal information will be revealed to persons who are not members of the responsible research team"). It would be appropriate to review this issue in document A.7.

Participation of the City Council in the data processing of Pilot Test 1

Given that the City Council's main participation in the project will occur, according to the information available, in pilot test 1 (as the entity that controls the cameras), special attention should be paid to data processing in this pilot test. The General Document does not clarify whether the City Council would also be responsible for the rest of the data processing in pilot test 1 (processing of "physiological data" and data collected from social networks), information that is not deduced from the available documentation and that I should clarify. In any case, with regard to the images that are collected, it is necessary to distinguish between those captured in interior and exteri

a) Interior spaces

The information available refers to the fact that the people affected will receive a "prior invitation" and that they will sign the informed consent (section 2.4 of the General Document), in relation to the processing of data "in closed spaces". In this case, it is planned to use several technical devices, among others, cameras. However, these would not have the purpose of video surveillance of spaces or people but rather, due to the information available, a support function to have information of interest for research, with its joint use with other technical devices that will be used (sensors, virtual reality...).

Bearing this in mind, in relation to this data processing in an interior and limited space in which the affected would participate prior to invitation, it is clear that the legal basis (ex. art. 6.1.a) consent and, where appropriate, in by virtue of article 9.2.a) RGPD) explicit consent.

In any case, the purpose of the collection and the circumstances in which it would be carried out, especially with regard to the existence of consent, would lead to the application of the regulations on the protection of personal data, but not that relating to the video sur

b) Outdoor spaces

It is particularly interesting to refer to the capture and processing of data through cameras that will be carried out in outdoor, open spaces (a cultural center and surroundings, without further specifying the extent of this space), given the doubts which presents this treatment from the perspective of data protection.

Given the information available, the concreteness, the nature and the extent of the public space in which cameras will be installed, the fact of whether or not the captured images will allow identifying physical persons, especially if the cameras could allow surveillance or monitoring of natural persons, are fundamental elements when determining the legal framework applicable to the capture of images of natural persons through surveillance cameras and their authorisation.

According to section 1.5 of the General Document "in the open space the cameras will be located at an appropriate height to prevent the collection of any personal data in order to protect the identity of the subjects and anonymity."

In the same sense, according to the "description" section of pilot test 1 (document A.8), "These devices will be located at a height in order to avoid theft, selecting the optimal height taking into account human size to avoid getting features

individual and identifying, and will not include sound either. This data will be sent via wifi to a secure server. (...).”

It seems that pilot test 1 intends that the capture of images outside does not allow the identification of physical persons in any case (it seems to be an "anonymous" data treatment in the sense indicated), although this it relies solely on the "height" at which the cameras would be placed.

It should be noted that, from the perspective of data protection, this might not be a sufficient guarantee that the people who are in the open spaces of the city that will be the object of capture for a wide period of time, will not be identifiable without efforts out of proportion As an example, although a camera may be installed at a distance that apparently does not allow the easy identification of people, the technical performance and resolution of certain cameras (which are unknown in the case at hand) could , even in this case, allow the identification of people without great difficulties. Given the information available, we cannot rule out this possibility when analyzing whether there is a sufficient legal basis for using these cameras.

At the outset, it does not seem that consent can be an adequate legal basis in this case, since the open space that the cameras would capture seems quite wide (a cultural center and surroundings, without further details), and it does not seem feasible that in an open space of these characteristics, the person in charge may require the consent of any natural person who walks there, prior to the effective capture of the image.

Having said that, it is necessary to examine whether the regulatory framework would enable, and in what terms, the treatment in question.

As this Authority has done on previous occasions (among others, in Opinions CNS 44/2013, or CNS 26/2019, which are available on the Authority's website, www.apd.cat), the regulations establish a specific regime for the use of cameras for surveillance purposes ("video surveillance").

According to article 22 of the LOPDGDD:

1. Natural or legal persons, public or private, may carry out the processing of images through camera or video camera systems with the aim of preserving the security of people and goods, as well as their facilities.

2. Images of the public road may only be captured to the extent that it is essential for the purpose mentioned in the previous section. (…). (...).

6. The processing of personal data from the images and sounds obtained through the use of cameras and video cameras by the Security Forces and Bodies and by the competent bodies for surveillance and control in prisons and for control, regulation, traffic surveillance and discipline, will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment has the purpose of prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, including the protection and prevention against threats to public security. Outside of these assumptions, said treatment will be governed by its specific legislation and additionally by Regulation (EU) 2016/679 and this organic law. (…).”

As can be seen from this and other specific regulations of application (Organic Law 4/1997, of August 4, which regulates the use of video cameras by the Forces and

Citizen Security Forces in public places (art.1.1)), the use of cameras and the capture of images for surveillance purposes in public spaces and on public roads (which could be captured in the case at hand, according to the information available), is limited to the Security Forces and Bodies.

Therefore, it would not be considered legitimate to capture images with the external cameras of the project, if to some extent these allow surveillance or monitoring of physical persons who, whether habitually or occasionally, may circulate in the recorded public spaces or public road.

This Authority does not have sufficient information (on the location, number and technical characteristics of the cameras, recording periods, etc.) to affirm or rule out the possibility that with the cameras in the project's exterior spaces, it is possible to whether or not to process images that allow the surveillance or monitoring of natural persons.

Although the description of the project does not envisage a purpose of surveillance or monitoring of people, it is up to the person in charge to take into account all these variables, to determine if the capture of the images would allow some kind of surveillance of people. If so, this treatment would not be enabled given that the legal system circumscribes the use of cameras for surveillance purposes ("video surveillance") on public roads exclusively to the action of the Security Forces and Bodies.

Otherwise, if the configuration of the camera system designed by the project is done in such a way that it does not allow in any case to monitor or monitor physical persons (a matter that this Authority cannot determine based on the information it has and which would require taking into account different elements, such as the specific capture of images, in different time slots or moments so that no pattern of presence, movements, or habits of any physical person can be extracted, between others), the following must be taken into account.

According to article 6.1 of the RGPD, the processing of the images would only be lawful if one of the foreseen requirements is given, either consent (art. 6.1.a) RGPD), or others, among which, and for the purposes that concern, that "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;" (art. 6.1.e) RGPD), how could, in this case, the participation of the City Council in a project that is part of a European Union research project (EU Regulation 1291/2013, of 11 of December, which establishes the 2020 horizon, Research and Innovation Framework Program (2014-2020), to the extent that this participation is linked to any of the functions that the law attributes to the City Council.

Organic Law 1/1982, of May 5, on civil protection of the right to honor, personal privacy and self-image (arts. 7 and 8), could be a sufficient legal basis, in the absence of consent, already which establishes that "actions authorized or agreed upon by the competent authority in accordance with the law will not, in general, be regarded as illegitimate interference, nor when a relevant historical, scientific or cultural interest prevails."

As has been pointed out, the fact that a purpose of surveillance is not foreseen but a purpose of scientific research, does not imply that, through the capture of images in open spaces of the city, it is not possible to identify people and make monitoring or surveillance of identified or identifiable natural persons.

According to the available information, it is planned to capture images over a fairly wide period of time (while the project lasts until the end of December 2021, according to document A.8, section Pilot test 1, "duration of recordings"). It is added that "the cameras will not be permanently active, but programmed to receive recordings at different time intervals."

If this type of one-off filming takes place, the possible interference with the rights of the people affected would be less than in a continuous and permanent capture of images.

First of all, as long as there is no continuous capture of images for long periods of time, or discontinuous capture but always in the same time slot, the risk of a possible use of the images for surveillance purposes could disappear public spaces, a matter to which we have already referred.

In particular, so that the specific capture of images conforms to the aforementioned regulations and can be considered an enabled treatment, it is appropriate that the person in charge takes into account, among others, the following guarantees:

- That the capture of natural persons is in any case punctual, exceptional and merely accessory to the set of captured images.

- That the people whose image may be captured in the outdoor spaces selected for the project are informed appropriately and in accordance with the terms of article 14 of the RGPD.

- That the technical characteristics of the cameras (resolution, image processing and processing capacity, zoom, etc.), as well as their location, do not allow the capture and recording of images that, qualitatively or quantitatively, exceed the point capture and merely accessory to personal data, in the terms set forth.

For all the above, and starting from the basis that the pilot test will not be limited to capturing anonymous information, as long as the person in charge eliminates any possibility that the cameras allow surveillance or monitoring, even if it is sporadic, of natural persons (treatment for which he would not have qualification), and ensure compliance with the requirements set out in the data protection regulations, it could be considered that LO 1/1982 is a sufficient legal basis for the treatment.

Among others, the City Council must review the way in which it will comply with the duty of information to those affected, which should mainly allow the exercise of the rights that the RGPD recognizes to the interested parties, in relation to the treatment of your data.

Both with regard to the treatment in indoor spaces and with regard to the treatment in outdoor spaces, both of pilot test 1, to which we have mentioned, it is necessary to agree that according to the provisions of article 35 of the RGPD:

> "1. When it is likely that a type of treatment, in particular if it uses new technologies, by its nature, scope, context or purposes, entails a high risk for the rights and freedoms of physical persons, the person responsible for the treatment will, before the treatment, an evaluation of the impact of the processing operations on the protection of personal data. A single evaluation may address a series of similar treatment operations that involve similar high risks.

2. The data controller will seek the advice of the data protection officer, if appointed, when carrying out the data protection impact assessment.

3. The data protection impact assessment referred to in section 1 will be required in particular in the event of:

a) systematic and comprehensive evaluation of personal aspects of natural persons that is based on automated processing, such as the creation of profiles, and on the basis of which decisions are taken that produce legal effects for natural persons or that significantly affect them in a similar way;

b) large-scale processing of the special categories of data referred to in article 9, paragraph 1, or of personal data relating to convictions and criminal offenses referred to in article 10, or

c) large-scale systematic observation of a public access area.

(...).”

According to the information available, in pilot test 1 it is planned to carry out a capture and recording of images of natural persons in a public access area which, due to the characteristics described, could affect a significant number of people. In addition, due to the available information, we cannot rule out that the use of sensor devices to obtain physiological data is foreseen not only in the indoor spaces, but also in the outdoor spaces that will be used in pilot test 1. Therefore , it could be that in both types of spaces (interior and exterior) it is planned to treat health data, which must necessarily be taken into account for the purposes of carrying out the impact assessment. This apart from the fact that, if in pilot test 1 it is planned to use sensors, also, in external spaces, and not only cameras, this would definitively rule out that the information captured by the external cameras can be considered "anonymous".

Therefore, in the case at hand, different elements come together (art. 35.3 RGPD) that could lead to the need to carry out an impact assessment under the terms of article 35 RGPD.

We refer, in this regard, to the document "Guidelines on the impact evaluation relative to data protection (EIPD) and to determine if the treatment "probably involves a high risk" for the purposes of Regulation (EU) 2016/679", of Article 29 Working Group, as well as the Authority's "Practical guide on impact assessment relating to data protection", which is available on the website: www.apd.cat.

Finally, we also agree that in document A.8, in relation to pilot test 1, it is mentioned that "3D equipment will be used (drones and a custom-built mapping platform), in order to scan the urban environment." Given that it is not clear enough what impact the possible capture of images with the use of drones could have, whether it will involve capturing personal data or not, or whether it will affect the interior or exterior space we have referred to, we assume that, as this Authority has highlighted, among others, in Opinions CNS 12/2014 and CNS 54/2013, the person in charge should take into account this impact, their legal capacity, and the way to inform those affected by the possibility to exercise their rights, which will depend on the locations in which these aircraft are used. In closed spaces, this information could be provided at the same time that consent is requested or, in the case of a collection enabled, if applicable, by LO 1/1982, by placing posters informative In any case, the person in charge must assess what measures he takes to inform those affected in an appropriate way.

VI

Regarding pilot test 2, point 2.1 of the General Document mentions that "workers could also be considered as a target group in Spain."

This raises the question of whether any of the Spanish partners (among them, the City Council that formulates the consultation), could participate more or less directly in pilot test 2, which foresees the processing of data in "work spaces", a question that I should clarify.

The lack of other mentions of this possibility in the information provided does not allow us to deduce whether the City Council should have any involvement in the processing of data in workplaces. If this is the case, it will be necessary to apply the principles and guarantees of data protection to the treatment and to inform those affected by the treatment, in the terms set out in this opinion.

With regard to pilot test 3, it follows from the available information that the City Council would not have any intervention as the person responsible for the treatment, so it is not considered necessary to make mention of it, beyond the general considerations already made in relation to the application of the principles and guarantees of the data protection regulations, at least, given the information available at the time of issuing this opinion.

VII

Taking these considerations into account, it is necessary to refer below to the Consent Form (Document A.7) and the Information Sheet (Document A.8) that accompany the consultation.

Article 12 of the RGPD provides that:

> "1. The person responsible for the treatment will take the appropriate measures to provide the interested party with all the information indicated in articles 13 and 14, as well as any communication in accordance with articles 15 to 22 and 34 relating to the treatment, in a concise, transparent, intelligible and easily access, with a clear and simple language, in particular any information aimed specifically at a child. The information will be provided in writing or by other means, including, if appropriate, by electronic means. When requested by the interested party, the information may be provided verbally as long as the identity of the interested party is proven by other means.
>
> (…)"

Accordingly, it does not appear that documents A.7 and A.8 provided with the inquiry are sufficiently transparent and intelligible.

At the outset, it must be said that it does not seem justified, rather it is counterproductive to separate the information on the one hand and the consent request on the other into two different documents. It should also be ensured that the information provided is not excessive. It is necessary to inform about the relevant aspects for the people involved, but avoid technicalities, repetitions or information about other aspects.

The project is divided into three pilot tests which, although they make up the said project, involve different data treatments, in different countries, and affecting different groups of natural persons. Therefore, each of the people who participate

should be able to freely decide to participate in any of the three pilot tests (and not participate in the others.

According to article 4.11 of the RGPD, the consent of the interested party is: "any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either through a statement or a clear affirmative action, the treatment of personal data concerning you;"

We also remember that article 6.1.a) RGPD provides for the provision of consent "for one or several specific purposes."

This is an unavoidable requirement to be able to consider that the provision of consent conforms to the requirements of the RGPD.

The RGPD requires for the provision of a valid consent that the affected person can consent to each treatment in a clear and differentiated manner, a general and indistinct consent being invalid with respect to data treatments that may or may not affect the person giving the consent.

Anyone affected must provide consent regarding the processing of their data, and not regarding other treatments that do not affect them. At the time of signing the informed consent, those affected must know specifically the conditions of the treatment that affect them based on the pilot test in which they participate, and must be able to express their consent clearly and without confusion with others treatments that do not affect them.

But also, taking into account that the people who will participate in the three pilot tests in principle will not be the same (the pilot tests will take place in different countries), it does not seem clear enough that the information of the three pilot tests.

For this reason, to comply with this requirement, it would be advisable to write and have three different forms, one for each pilot test. Each of these forms can include general information about the project, and in addition, in a sufficiently clear and differentiated manner, all the informative content provided for in article 13 RGPD (the different sections we refer to in the following legal basis), and the corresponding consent provision clause, which the affected person must sign.

Alternatively, if those responsible establish that there is a single form instead of the three proposed, it would be necessary for this to include the content referred to each of the three pilot tests in a clearly separated and structured form based on each pilot test, a requirement that is not met in the examined model.

Otherwise, the provision of informed consent cannot be considered to comply with the requirements of the RGPD.

We note that the "Guide for compliance with the duty to inform the RGPD" is available on the Authority's website, www.apd.cat, which may be of interest in the case at hand.

VIII

Given that the personal data would be collected from the interested party (not so in the case of information obtained from social networks, in relation to which, if applicable, the provisions of article 14 of the RGPD should be taken into account), Article 13 of the GDPR must be applied. According to paragraph 1 of article 13:

"1. When personal data relating to an interested party is obtained, the data controller, at the time it is obtained, will provide all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative; b) the contact details of the data protection officer, if applicable; c) the purposes of the treatment for which the personal data is intended and the legal basis of the treatment; d) when the treatment is based on article 6, section 1, letter f), the legitimate interests of the person in charge or of a third party; e) the recipients or the categories of recipients of the personal data, as the case may be; f) in its case, the intention of the person in charge to transfer personal data to a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of the transfers indicated in articles 46 or 47 or article 49, section 1, second paragraph, refers to adequate or appropriate guarantees and the means to obtain a copy of these or the fact that they have been provided."

Regarding these forecasts, and given the content of documents A.7 and A.8, we agree that the general considerations that have been made regarding different issues (responsibility, TID, etc.) are transferred in some points of the information which is provided to those affected.

- Identity and contact details of person in charge and DPD (art. 13.1, a) ib))

Given the content of the Information Sheet (Doc. A.8), it is difficult for those affected to easily identify, in the terms required by the principle of transparency, who is responsible for the collection and processing of their data in relation to the pilot test in which they are participating and, therefore, who they should contact if they want to exercise their rights.

Regarding this, Document A.7 includes the following reference: "Contact person: In case of doubts related to your role as a participant in this research study, you can contact the Project Coordinator, Dr. (…), email (…), telephone: (…) »

However, beyond the fact that it has been possible to establish a single contact person for the entire project (which, on the other hand, might not be operational enough for the purposes of attending in time and form to the exercise of rights by affected, obligation that falls on the person in charge), the RGPD requires identifying the person in charge.

It is necessary to indicate the contact details of the person in charge or their representative (art. 27 RGPD) in relation to each pilot test and, where appropriate, of their data protection representative (DPD), and not only the contact details of the person physics that coordinates the entire project

Document A.7 includes the name, surname, place, date and signature of the participant, on the one hand, and of the "Project manager/contact person", on the other, and the following provision: "(.. .) I confirm with my signature that the project manager or contact person has satisfactorily answered my questions and that I have read and understood the terms of this consent (...).".

- Purposes and legal basis of the treatment (art. 13.1.c))

It follows from the information available, for the purposes of interest, from documents A.7 and A.8, that the data processing we are dealing with is part of a research project, and that this would be the purpose of the processing. Given the set of information provided in these documents, it can be considered that those affected are informed of the purpose of the treatment, as well as of the necessary provision of consent, which would be the legal basis that enables the treatment of their data.

- Recipients or categories of recipients (art. 13.1.e))

The controller must provide information on the "recipients or categories of recipients" of the personal data.

As has been said, given the information available, it would be useful to clarify who are responsible for each pilot test and whether the other partners are jointly responsible or whether they can be considered as "recipients" for the purposes of the information to be provided to those affected In any case, it would be necessary to identify the identity of the recipients who are neither responsible nor in charge, or, at least, if applicable, specify the category of these recipients (other university research centers,

- International data transfers (art. 13.1.f))

As has already been agreed in this opinion, given the information available, it cannot be ruled out that the person responsible or persons responsible for the data treatments that will occur as a result of the three pilot tests of the project, may be the subject of international data transfers (TID). If this were the case, the Informed Consent Form will need to provide those affected with the corresponding information, under the terms of Article 13.1.f) RGPD, quoted.

Having said that, article 13, section 2, provides the following:

> **2. In addition to the information mentioned in section 1, the controller will provide the interested party, at the time the personal data is obtained, with the following information necessary to guarantee fair and transparent data processing:**
>
> **a) the period during which personal data will be kept or, when not possible, the criteria used to determine this period; b) the existence of the right to request from the person responsible for the treatment access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to the portability of the data ; c) when the treatment is based on article 6, section 1, letter a), or article 9, section 2, letter a), the existence of the right to withdraw consent at any time, without it affecting the legality treatment based on consent prior to its withdrawal; d) the right to present a claim before a control authority; e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data; f) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party.**
>
> **(...)."**

With respect to these forecasts, and given the content of documents A.7 and A.8, we make the following changes, in relation to the sections that should be reported in the case at hand.

- Data retention period (art. 13.2.a))

Document A.7 includes the following provision, in the "Use of data" section:

"(...). The data storage period will be 5 years after the project.
In the meantime, I have the right to access, modify or request the deletion of my data.

I authorize the collection of my visual data from the cameras to be used for scientific purposes only. The data storage period will be 5 years after the project. In the meantime, I have the right to access, modify or request the deletion of my data."

A specific period of 5 years is foreseen for the conservation of the processed information, of which the affected parties are informed, as required by the RGPD.

- Exercise of rights (art.13.2.b))

The "Use of data" section of document A.7 includes the following provision: "In the meantime, I have the right to access, modify or request the deletion of my data."

According to article 13.2.b) RGPD, it is necessary to inform those affected of the existence of the right to request from the person responsible for each of the treatments access to the data of the affected (article 15 RGPD), its rectification or deletion (art. 16 and 17 RGPD), the limitation of treatment (art. 18 RGPD), the right to portability (art. 20 RGPD), and the right to oppose the treatment (art. 21 RGPD).

In the case at hand, it would not be necessary to inform about the right of opposition since the data processing referred to in the Consent Form is based on the informed consent of those affected. Nor would it be necessary to inform about the right to data portability to the extent that the person responsible for the treatment is the City Council (eg art. 20.3 RGPD).

Taking this into account, it is necessary to mention in the informative clause of the project the exercise of the right of access, the right of rectification, the right to delete the data -which are already mentioned-, as well as adding the reference to the right to limit treatment, which does apply in the case at hand.

Having said that, it would be appropriate to refer to the RGPD's own terminology, regarding the rights of rectification or deletion, instead of referring to the "modification" or "deletion" of the data.

- Right to withdraw consent (art. 13.2.c))

Document A.7 includes the following clause: "Participation is voluntary and there will be no financial remuneration. At any time you have the right to withdraw your consent to participate in this research project without having to give any explanation or that this implies any disadvantage".

It can therefore be considered that the Consent Form adequately includes this provision, which is necessary with respect to the processing of personal data that

will produce as a result of the project and that have the consent of those affected as an enabling legal basis.

- The right to submit a claim to a control authority (art. 13.2.d))

We agree that there is no reference to this issue in documents A.7 and A.8 and therefore it is necessary to include this information in the informed consent document. The Control Authority to which reference will need to be made depends on who is responsible.

Specifically, with regard to the City Council formulating the consultation that, in the terms indicated, would be responsible for the processing of data in pilot test 1 (at least, of the images captured and recorded through cameras placed in public spaces of the city), it will be necessary to indicate that those affected can submit, if necessary, a claim to the Catalan Data Protection Authority.

This requirement is extended, if applicable, to the rest of the treatments for which the City Council may be responsible.

In accordance with the considerations made in this opinion the following are made,

Conclusions

1. It is necessary to review the content of the documentation provided in the terms set out in Legal Basis IV of this opinion, in particular, in relation to the following issues:

- **Determination of responsibility or, where appropriate, co-responsibility of the treatment**
- **The expected information flows**
- **International data transfers (TID)**
- **Security**
- **The use of anonymous data or pseudonymisation**

2. With regard to pilot test 1, in the case of the treatment of images captured by cameras by the City Council, in addition to having a sufficient legal basis, the City Council, as responsible, must ensure compliance of the other requirements provided for in the data protection regulations.

It is appropriate to specify the responsibility of the City Council, if applicable, regarding the treatment of physiological data and regarding the treatment of social network information in pilot test 1.

3. For the purpose of providing informed consent in terms of article 4.11 and article 12 et seq. of the RGPD, it is necessary to review documents A.7 and A.8 in order to avoid repetitions, provide greater clarity regarding the treatment that affects each interested party depending on the pilot test in which they participate and, if necessary, recast both documents.

With regard to the information that must be provided to those affected (art. 13 RGPD), it is appropriate to review several sections in the terms described in Legal Basis VIII of this opinion.

Barcelona, November 18, 2019