CNS 6/2020

Opinion in relation to the consultation of a city council on the implementation of an intelligent system for the selective collection of waste

On February 20, 2020, a letter from a city council was presented to the Catalan Data Protection Authority in which several questions were raised related to the implementation of a selective waste collection system based on the use of containers that incorporate a radio frequency identification system.

On February 25, 2020, a letter was sent to the town hall requesting the report on the proposed implementation of the selective waste collection system or, failing that, information on the following aspects :

- **Detailed description of the operation of the waste collection system in terms of data processing (data that will be processed, origin of the data and media where it will be incorporated).**
- **Determination of the subjects involved in data processing with an indication of the respective tasks and/or functions with regard to access or data processing.**
- **Description of the pseudonymization process (attribution of code to users of the service by identify them).**
- **Anticipated information flows.**
- **Anticipated security measures.**

On March 10, 2020, the City Council responded to the request for information by sending a report issued by the council's waste and natural environment department in relation to the proposed implementation of the new waste collection system.

Having analyzed the request and seen the report of the Legal Counsel, the following is ruled.

I

(...)

II

The City Council expresses in its consultation the will to implement a new system of management and selective waste collection in the municipality based on the access control system with identification of users in waste and organic containers.

Specifically, in this model, the user will have a radio frequency identification card (RFID) with which they can access the containers (equipped with RFID readers and electronic locking systems) and, once their identification has been authenticated, deposit the waste generated.

The inquiry does not state whether the aforementioned containers will be equipped with weight or degree of filling sensors. This additional technology makes it possible to obtain more accurate data on user behavior patterns and is usually common in so-called “camera systems”,

which seems to be the answer to the proposal presented by the City Council, in order to optimize the waste collection system.

In any case, the query points out that:

- **Each home will have two RFID cards (smart cards).**
- **Additionally and voluntarily, users will be able to make use of a smartphone application, which allows them to check the number of openings made, generate service incidents, check the collection schedule or other information related to municipal waste .**

- **A record will be taken of each opening of the containers by each user of the system**
- **The recorded data will be the RFID identification numbers, date and time.**
- **This data will be transferred online via GSM/GPRS modem to the MOBA company's MAWIS U2 software, which integrates the necessary tools for data collection, transmission and processing.**

- **The company MOBA is the supplier of the technology necessary for the provision of the service, in this case, to the company VALORIZA, concessionaire of the municipality's waste collection and road cleaning service.**
- **The aforementioned software allows you to obtain information from the service based on a multitude of reports and statistics**

In turn, it is agreed that the implementation of this new system of management and selective collection of waste in the municipality will be carried out progressively in three phases, with the ultimate goal of establishing the system of payment by generation. This system makes it possible to calculate the actual generation of waste from each household or business and to define the amount of the fee based on the amount and type of waste generated.

In view of the attached documentation, these three phases of deployment of the proposal broadly correspond to the following actions:

1. **Creation of the database necessary for the implementation of the service.**

2. **Modification of the municipality's waste tax ordinance to adapt to the payment per generation system.**

3. **Once the new tax ordinance has been approved, formalization of data controller contracts with the subjects involved in data processing.**

It should be noted that, of these three phases, only in the section relating to phase 1 of the documentation sent is a fairly detailed description of the information that, from the point of view of data protection, is required for the purposes to carry out a careful examination of the incidence that the proposal presented may entail for the right to data protection of the affected persons (origin of the data to be treated, pseudonymization process, intervening subjects, information flows, etc.) .

On the contrary, the information provided regarding phases 2 and 3 turns out to be imprecise with regard to the processing of personal data. It is only pointed out (phase 2) that, for the modification of the tax ordinance, it will be necessary to review and modify the database that is available, without further details, and (phase 3) that this database (of which it is not stated in what sense

would be modified) will be communicated to third parties, without specifying the purpose of this communication, beyond indicating the formalization of a processing order.

Given this, it should be noted that the examination of the proposal presented by the City Council and, in particular, of the questions raised in its consultation will be carried out exclusively on the basis of the information available regarding phase 1 of the process of implementation of the waste management and selective collection system. In the event that the City Council wishes to also formulate a query regarding phases 2 and 3, it would be necessary to formulate a new query providing detailed information on the content of these phases and, in particular, on the processing of personal data that would be intended to term

The questions raised are:

a) If the data processing that is intended to be carried out is legitimate for the management and waste treatment.

b) Whether the transfer of the database of the inhabitants of the municipality to a third party is possible and, if so, whether it would be sufficient for the person in charge of the treatment to have a contract in accordance with article 28.2 of Regulation (EU) 2016/ 679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD)), and comply with the security measures required by the regulations.

III

The RGPD establishes that all processing of personal data must be lawful, fair and transparent (Article 5.1.a)).

Article 6.1 of the RGPD regulates the legal bases on which the processing of personal data can be based. Specifically, section e) provides that the treatment will be lawful if "it 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".

Article 6.3 of the RGPD establishes that the basis of the treatment indicated in this article 6.1.e) must be established by the Law of the European Union or by the law of the Member States that applies to the person responsible for the treatment.

The reference to the legitimate basis established in accordance with the internal law of the Member States referred to in this article requires that the rule of development, when dealing with the protection of personal data of a fundamental right, has the status of law (Article 53 CE), as recognized in Article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD).

In accordance with Law 7/1985, of April 2, regulating the bases of the local regime (hereafter, LRBRL), the management of urban solid waste is part of the competences of the municipalities (Article 25.2.b)).

In similar terms, the Consolidated Text of the Municipal and Local Regime Law of Catalonia (hereinafter, TRLMRLC), approved by Legislative Decree 2/2003, of April 28, establishes that the municipality has its own powers in matters of collection and waste treatment (article 66.3.l)).

The revised text of the Waste Regulatory Law (hereinafter, TRLR), approved by Legislative Decree 1/2009, of July 21, regulates "the management of waste in the territorial scope of Catalonia, within the framework of the competences of the Generalitat in matters of territorial planning, environmental protection and nature preservation."

Article 42 of the TRLR, relating to the powers and functions of the municipalities, provides that:

> **"1. The management of municipal waste is a competence of the municipality.**
> **2. The municipality, independently or in association, must provide, at a minimum, the service of selective collection, transport, recovery and disposal of municipal waste. (...)".**

With regard specifically to the selective collection of waste, the context in which we find ourselves, article 53 of the TRLR provides that:

> **"1. With the aim of promoting recycling and the material recovery of municipal waste, all municipalities must provide the service of selective collection of the various fractions of waste. The municipalities must provide the selective collection service using the separation and collection systems that have been shown to be more efficient and that are more suitable to the characteristics of their territorial area. (...).".**

It is also worth noting the provisions of article 10 of the TRLR, which provides that:

> **"1. In order to reduce the production of waste and its danger, the following must be encouraged: a) The application of the best available technologies that favor the reduction of waste, the concentration, the saving of natural resources and energy, and that reduce the risks to the environment and people's health. (...).**
>
> **2. Economic and fiscal measures aimed at promoting the reduction of waste production, treatment to reduce its danger, material recovery and recycling must be established. Measures aimed at reducing packaging and packaging waste are a priority. (...).".**

At the local level, the most relevant economic instrument is undoubtedly the garbage tax, regulated through tax ordinances.

The revised text of the Law regulating local finances, approved by Royal Legislative Decree 2/2004, of March 5, establishes that waste collection and treatment services may be subject to fees (article 20.4.s)).

For its part, article 40.4 of the TRLR establishes that "the rates and fees for services provided by local bodies must be set by the corresponding fiscal ordinances."

In addition to all this, the Metropolitan Program for the prevention and management of municipal resources and waste 2019-2025 (planning instrument of the Metropolitan Area of Barcelona (hereafter, AMB)), which proposes a change in the metropolitan waste collection and treatment system, not only to meet the European objectives, but to incorporate a new logic in the way natural resources are used and waste is managed, establishes that in 2025 the

municipalities in the metropolitan area (among them, the present municipality) must have incorporated a system of bonus or payment for use of the collection service.

In view of the considerations made so far, it can be said that the implementation of a management system and selective collection of waste such as that proposed in the consultation would be framed in the exercise of the powers that, in the matter of waste management, current legislation attributes to the municipalities.

Consequently, the legal basis of article 6.1.e) of the RGPD, to which reference has been made, could legitimize the processing of personal data that is necessary for this purpose. This, as long as the rest of the principles and guarantees established in data protection legislation are respected.

IV

In view of the information available, the implementation of the selective waste collection system will be carried out in the present case using pseudonymised data, which must be assessed positively.

According to article 4.5) of the RGPD, pseudonymization means "the processing 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 separately and is subject to technical and organizational measures aimed at ensuring that personal data are not attributed to an identified or identifiable natural person."

Through this technique, it is intended to guarantee greater respect for the privacy of the affected persons, given that its application to personal data allows to reduce the risks associated with its treatment for the affected persons.

This is how it is done in recital 28 of the RGPD:

> "The application of pseudonymization to personal data can reduce the risks for the interested parties and help those responsible and those responsible for the treatment to fulfill their data protection obligations".

Pseudonymization therefore becomes a relevant technique in the context of data protection by design, allowing the data controller to guarantee more secure data processing, as well as compliance with the rest of the protection requirements of data

In this sense, article 25 of the RGPD establishes that:

> "1. 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 natural persons, the responsible for the treatment will apply, both at the time of 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 fulfill the requirements of this Regulation and protect the rights of the interested parties."

In any case, it must be borne in mind that pseudonymised data, unlike anonymised data, remain subject to the principles and obligations established in the data protection regulations.

This is clear from Recital 26 of the RGPD:

> **"The principles of data protection must be applied to all information relating to an identified or identifiable natural person. Pseudonymized personal data, which could be attributed to a natural person through the use of additional information, must be considered information about an identifiable natural person. To determine whether a natural person is identifiable, all means, such as identification, that can reasonably be used by the data controller or any other person to directly or indirectly identify the natural person must be taken into account. To determine whether there is a reasonable probability that means will be used to identify a natural person, all objective factors must be taken into account, such as the costs and time required for identification, taking into account both the technology available at the time of the treatment as technological advances. Therefore, the principles of data protection should not be applied to anonymous information, that is, information that is not related to an identified or identifiable natural person, nor to data converted into anonymous data in such a way that the interested party is not identifiable, or to be Consequently, this Regulation does not affect the treatment of said anonymous information, including for statistical or research purposes."**

v

The consultation describes the pseudonymization procedure that will be followed in the present case, for the purpose of guaranteeing the processing of user data in the new selective waste collection system.

At the outset, it is agreed that a database provided by the AMB will be used, which would have been obtained, in turn, from the Societat General d'Aigües de Barcelona (AGBAR). This database contains the following information:

- **Number corresponding to the supply contract.**
- **Type of identification document and identification number (DNI/NIF) of the client.**
- **Name and surname of the client.**
- **Customer contact details: phone and email.**
- **Customer address details: municipality, postal code, street name, building number, floor and door**

From the point of view of data protection, we are faced with a first flow of personal information between public administrations which, like any other data processing, in order to be considered lawful requires the concurrence of one of the legal bases established in data protection legislation.

In the present case, the legal basis of article 6.1.e) of the RGPD, to which mention has been made before, could protect the purported transfer of data, to the extent that a rule with the rank of law would apply (LRBRL and TRLR) which gives the municipality powers in a matter (that of waste management) for the exercise of which it may be necessary to have said perso

Point out that the data treatments carried out by the public administration are subject to the principles established in the RGPD, among them, the principle of purpose limitation (article 5.1.b) RGPD), according to which the data must be collected for specific, explicit and legitimate purposes, and must not be further processed in a manner incompatible with these purposes.

It is, therefore, necessary, in order to consider the communication of data lawful, that the purpose of the treatment for which these data will be used is compatible with the purpose for which they were initially collected. This follows both from Article 5.1.b) of the GDPR and from Article 6.4 of the GDPR.

It should also conform to what is established in article 155 of Law 40/2015, of October 1, on the legal regime of the public sector, in its wording given by Royal Decree Law 14/2019, of 31 October, whereby urgent measures are adopted for reasons of public security in matters of digital administration, public sector procurement and telecommunications (hereafter, RDL 14/2019), according to which:

> **"Article 155. Data transmissions between Public Administrations.**
>
> **1. In accordance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, relating to the protection of individuals with regard to the processing of personal data and the freedom circulation of these data and by which Directive 95/46/CE is repealed and in Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights and its development regulations, each Administration must facilitate the access of the remaining Public Administrations to the data relating to the interested parties in their possession, specifying the conditions, protocols and functional or technical criteria necessary to access said data with the maximum guarantees of security, integrity and availability.**
>
> **2. In no case may further processing of the data be carried out for purposes incompatible with the purpose for which the personal data were initially collected. In accordance with the provisions of article 5.1.b) of Regulation (EU) 2016/679, the subsequent processing of personal data for archiving purposes in the public interest, scientific and historical research purposes will not be considered incompatible with the initial purposes or statistical purposes.**
>
> **3. Apart from the case provided for in the previous section and as long as the special laws applicable to the respective treatments do not expressly prohibit the further treatment of the data for a different purpose, when the Public Administration transferring the data intends the further treatment of the same for a purpose that he deems compatible with the initial purpose, he must communicate it beforehand to the ceding Public Administration so that it can verify said compatibility. The ceding Public Administration may, within ten days, object with reason. When the transferring Administration is the General Administration of the State, it may in this case, exceptionally and with reason, suspend the transmission of data for reasons of national security in a precautionary manner for the time strictly indispensable for its preservation. As long as the transferor Public Administration does not communicate its decision to the transferee, it will not be able to use the data for the intended new purpose.**

> **The cases in which the treatment for another purpose other than that for which the personal data were collected are provided for in a rule with the rank of law in accordance with the provisions of article 23.1 of the Regulation (EU) 2016/679."**

As we have seen, the AMB is the public administration of the metropolitan territory of Barcelona, which is made up of 36 municipalities, including the present municipality.

In accordance with article 14 of Law 31/2010, of August 31, the AMB exercises powers in matters of waste management, such as the treatment, valorization and disposal of municipal waste or the coordination of municipal systems for the collection of municipal waste, and also competences in the field of water, such as the provision of the service of distribution of drinking water to the consumer, which is carried out through concessions with certain supply companies (as would be the case, of AGBAR).

The database subject to transfer seems to be linked to the provision of the water supply service to the municipalities of the AMB, one of them being the municipality making the inquiry. In the cost of this service, and by virtue of the competences of the AMB in matters of waste, the metropolitan fee for the treatment and deposition of municipal waste is also reflected, among other tax concepts.

Given this, and bearing in mind that the City Council will use the data communicated for the implementation of a selective waste collection system which, in the end, must lead to the establishment of the payment per generation system, it is say, to the collection of a fee for the provision of this service, the transfer of this data could be understood as responding to a compatible purpose (article 6.4 RGPD). In any case, it would be up to the AMB to verify this compatibility between purposes.

In addition to this, it must be borne in mind that the data treatments carried out by the public administration must also comply with the principle of data minimization (Article 5.1.c) RGPD), so it can only consider- the communication of data that is adequate, relevant and limited to what is necessary in relation to the purpose for which it is communicated is legitimate.

In this sense, recital 31 of the RGPD makes it clear:

> **"Requests for communication from public authorities must always be submitted in writing, in a motivated and occasional manner, and must not refer to the entirety of a file or lead to the interconnection of several files. The treatment of personal data by said public authorities must be in accordance with the regulations on data protection that are applicable depending on the purpose of the treatment".**

In accordance with this, the authorization conferred by article 6.1.e) of the RGPD would only operate in the present case with respect to the data strictly necessary for the correct identification of the users of the selective waste collection system through use of smart cards and containers.

Taking into account the information contained in the database provided by the AMB, by virtue of this principle of minimization, it seems that it would be appropriate - and, therefore, lawful - to communicate the identifying data and those relating to the address of users resident in the municipality making the query.

However, given the information available, it would not seem justified, for the purposes of establishing the information necessary to start the new selective waste collection system, the communication of the data relating to the number of the subscription policy or contract of supply

With regard to the data relating to the telephone number and email of these users, warn that their assignment would only be lawful if it was necessary for the effective implementation of the selective waste collection system that is intended to be carried out.

VI

Secondly, it is pointed out that the City Council will link the data received from the AMB (which, it must be reiterated, should be limited to those indicated in the previous point) to a random numerical code for each user.

Likewise, it is agreed that only this code will be provided to the concessionary company of the waste collection service in the municipality, who in turn will provide this code to their company that supplies the technological solutions necessary for the provision of this service

The purpose of this communication is to be able to link the mentioned code to the cards that will later be provided to people using the service and that must allow them access to the containers to deposit the waste generated. It is expected that, once this link has been made, the City Council will incorporate the numbers of the cards assigned to each unique code into its database.

Given that, as we have seen, pseudonymised data remains subject to data protection regulations, it should be noted that, from the point of view of data protection, we are faced with another flow of personal information, in this case, from the City Council to the concessionary company of the service (and also from this company to the company supplying the technological solution).

It should be borne in mind that, in this case, as Law 9/2017, of November 8, on public sector contracts (hereafter, LCSP) is applicable, the same rule attributes to said companies the condition of being in charge of treatment, figure that the RGPD defines as "the natural or legal person, public authority, service or any other body that processes personal data on behalf of the person responsible for the treatment" (article 4.8).

This follows from additional provision 25a of the LCSP:

> **"1. The contracts regulated in this Law that involve the processing of personal data must fully respect Organic Law 15/1999, of December 13, on the Protection of Personal Data, and its implementing regulations.**
> **2. In the event that the contract involves the contractor's access to personal data whose treatment the contracting entity is responsible for, that person will have the consideration of encargato del tratamiento.**
> **In this case, access to these data will not be considered data communication, when the provisions of article 12.2 and 3 of Organic Law 15/1999, of 13**

of December In any case, the provisions of article 12.2 of said Law must be stated in writing.
When the contractual provision ends, the personal data must be destroyed or returned to the contracting entity responsible, or to the person in charge of treatment that had been appointed.
The third party in charge of the treatment will keep the data properly blocked as long as responsibilities could arise from their relationship with the entity responsible for the treatment.
3. In the event that a third party processes personal data on behalf of the contractor, responsible for the treatment, the following requirements must be met: a) That said treatment has been specified in the contract signed by the contracting entity and the contractor. b) That the processing of personal data conforms to the instructions of the data controller. c) That the contractor in charge of the treatment and the third party formalize the contract in the terms provided for in article 12.2 of Organic Law 15/1999, of December 13.

In these cases, the third party will also have the consideration of treatment manager."

Article 33.1 of the LOPDGDD establishes that "access by a data controller to personal data that is necessary for the provision of a service to the data controller will not be considered data communication as long as the provisions of the Regulation are met (EU) 2016/679, in this organic law and its implementing rules."

In view of this, it would be necessary that, already in this phase 1 of the implementation of the proposal presented (not in phase 3 as indicated in the consultation), an assignment of the treatment be formalized between the City Council (responsible) and the concessionary company (in charge of processing), through a contract that binds them.

In this contract it would be necessary to establish the object, duration, nature and purpose of the treatment, as well as the type of personal data and categories of interested parties and the obligations and rights of the person in charge, and, in particular, that the company in charge of processing (Article 28.3 RGPD):

"a) will treat personal data solely following the documented instructions of the person in charge, including with respect to the transfer of personal data to a third country or an international organization, unless it is obliged to do so by virtue of the Law of the Union or of the Member States that applies to the person in charge; in such a case, the manager will inform the person in charge of that legal requirement prior to the treatment, unless such Law prohibits it for important reasons of public interest; b) will guarantee that the persons authorized to treat personal data have committed to respect confidentiality or are subject to a confidentiality obligation of a statutory nature; c) will take all the necessary measures in accordance with article 32; d) will respect the conditions indicated in sections 2 and 4 to resort to another treatment manager; e) will assist the person in charge, taking into account the nature of the treatment, through appropriate technical and organizational measures, whenever possible, so that he can comply with his obligation to respond to requests aimed at the exercise of the rights of the interested parties established in chapter III;

f) will help the manager to ensure compliance with the obligations established in articles 32 to 36, taking into account the nature of the treatment and the information available to the manager; g) at the choice of the person responsible, will delete or return all personal data once the provision of the treatment services is finished, and will delete the existing copies unless the conservation of personal data is required under Union Law or member states; h) will make available to the person in charge all the information necessary to demonstrate compliance with the obligations established in this article, as well as to allow and contribute to the performance of audits, including inspections, by the person in charge or another auditor authorized by said responsible

In relation to what is provided in letter h) of the first paragraph, the person in charge will immediately inform the person in charge if, in his opinion, an instruction infringes the present Regulation or other provisions in the area of data protection of the Union or the Member States. "

Also, it would be necessary for this contract to establish the provision that, by means of its formalization, the City Council authorizes the concessionaire company to subcontract certain services that said company considers essential to guarantee the correct provision of the collection service selective waste, specifically, information management services and ICT technologies (in this case, provided by another company).

This follows from article 28.2 of the RGPD, according to which "the treatment manager will not resort to another manager without the prior written authorization, specific or general, of the person in charge. In this last case, the person in charge will inform the person in charge of any changes foreseen in the incorporation or substitution of other persons in charge, thus giving the person in charge the opportunity to oppose said changes."

It would also be necessary for the concessionary company to formalize a specific contract with the subcontracted company, in which all the obligations that the City Council (responsible) imposes on it as the person in charge of the treatment, which this other subcontracted company should establish should also comply (article 28.4 RGPD).

Make it clear that, in case of non-compliance, the initial person in charge (the concessionary company) would continue to be fully responsible for the fulfillment of the obligations of the sub-person in charge of the treatment (the City Council).

Also warn that the subcontracting of the services provided by this other company, regardless of the location of its servers, could involve an international transfer of data (TID), if personal information is transmitted to third countries located outside the European Economic Area, assuming that said transmission should be governed by what is established in articles 44 to 50 of the RGPD.

With regard to the adoption of security measures, an aspect that is expressly mentioned in the consultation, it should be agreed that the contract that formalizes the task of treatment should establish the obligation of the person in charge to adopt all the appropriate technical and organizational measures to guarantee a level of security appropriate to the risk, in accordance with the provisions of article 32 of the RGPD (28.3.c) RGPD).

It would be up to the City Council, as responsible, to carry out the risk assessment to determine the appropriate security measures to guarantee the security of the processed information and the rights

of the affected people. For its part, the concessionary company, as the person in charge, should also assess the possible risks arising from the treatment, taking into account the means used and other circumstances that may affect security (articles 32 and 28.3.f) RGPD).

The City Council should take into account whether said company uses any certification mechanism, given that, within the framework of the processing order, compliance with certain security standards may be an indicator to take into account at the time to establish that the treatment is in accordance with the requirements of the RPGD and the protection of the rights of the affected person is guaranteed (article 28.5 RGPD).

In any case, these security measures should conform to the National Security Scheme, as inferred from the first additional provision of the LOPDGDD.

On these and other issues, it may be of interest to consult the Guide on the data controller in the RGPD, available on the Authority's website http://apdcat.gencat.cat.

In addition to all this, in the event that the contract file for the waste collection and road cleaning service had started from November 6, 2019, the date on which RDL 14/2019, already cited, entered into force (understood as the start of the publication of the call for the contract award procedure (third transitional provision)), it is necessary to keep in mind what is established in article 5 of RDL 14/2019.

This article 5 modifies some precepts of the LCSP, among them, article 122.2, which, in its wording given by this RDL 14/2019, provides the following:

> "2. (...)
>
> The documents must expressly mention the obligation of the future contractor to respect the current regulations on data protection.
>
> Without prejudice to the provisions of article 28.2 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, relating to the protection of individuals with regard to the processing of personal data and the free circulation of these data and for which Directive 95/46/CE is repealed, in those contracts whose execution requires the processing of personal data by the contractor on behalf of the person in charge of the processing, the application will additionally state:
>
> a) The purpose for which said data will be transferred.
> b) The obligation of the future contractor to submit in any case to the national and European Union regulations on data protection, without prejudice to what is established in the last paragraph of section 1 of article 202. c) The obligation of the awarded company to present before the formalization of the contract a declaration in which it makes clear where the servers will be located and from where the services associated with them will be provided. d) The obligation to communicate any change that occurs, throughout the life of the contract, of the information provided in the statement referred to in letter c) above. e) The obligation of the bidders to indicate in their offer, if they intend to subcontract the servers or the services associated with them, the number or the business profile, defined by reference to the conditions of professional or technical solvency, of the subcontractors to those that are going to be entrusted with their implementation.

In the documents corresponding to the contracts referred to in the previous paragraph, the obligations listed in letters a) and e) above must in any case be qualified as essential for the purposes of what is provided for in letter f) of section 1 of article 211 .”

And also article 202.1 of the LCSP, which in its wording given by RDL 14/2019 provides that:

"1. (…)

Likewise, in the documents corresponding to contracts whose execution involves the transfer of data by public sector entities to the contractor, the establishment of a special condition of execution that refers to the contractor's obligation to submit to national regulations and the European Union in the matter of data protection, also warning the contractor that this obligation has the character of an essential contractual obligation in accordance with the provisions in letter f) of section 1 of article 211.”

In the event that the aforementioned procurement file had been initiated prior to the indicated date, although it will be governed by the previous regulations, it should be borne in mind that, in the event of a modification to the contract, this will apply article 5 of RDL 14/2019.

This is clear from the third transitional provision of RDL 14/2019:

"1. The recruitment proceedings initiated before the entry into force of this Royal Decree-Law will be governed by the previous regulations. For these purposes, it will be understood that the procurement procedures have been initiated if the corresponding call for the contract award procedure had been published. In the case of procedures negotiated without publicity, to determine the moment of initiation the date of approval of the documents will be taken into account.

2. Notwithstanding the above, contracts based on framework agreements that do not establish all the terms will be governed by the regulations in force on the date of sending the invitation to tender to the companies part of the framework agreement or by the regulations in force in the date of award if the contract based does not require a new tender. In cases where the framework agreement had been tendered subject to the previous regulations and, as a consequence of the application of the provisions in the first paragraph of this paragraph, some or all of the contracts based on that framework agreement will result from application of the new regulation resulting from this Royal Decree-Law, the contracting authority must prepare the tender documents corresponding to said contracts based on this new regulation.

3. Article 5 will apply to changes to contracts that begin after they come into force.”

VII

The consultation also points out that, as part of the implementation process of the new selective waste collection system, the City Council will send an informative letter to all the addresses in the municipality, which will contain the unique code linked to the two cards that correspond to the address and the owner or occupant will be requested to collect them at the council. This communication would be carried out using the data from the Municipal Regist

As we have seen, data processing carried out by public administrations remains subject to the principle of purpose limitation (Article 5.1.b) RGPD), according to which, remember, data must be collected for specific purposes, explicit and legitimate, and must not be further processed in a manner incompatible with these purposes.

The Padró is a type of registration with a very specific threefold purpose: to determine the population of the municipality, to be required to acquire the status of resident, and to serve as proof of residence and habitual address (article 15 LRBRL).

It must, therefore, be borne in mind that the data of the Municipal Register can only be used for other purposes to the extent that they are not incompatible with this triple purpose that justifies the initial collection.

On this issue, it should be remembered that this Authority, in previous opinions (among others, CNS 47/2017, CNS 39/2018 or CNS 19/2019, available on the Authority's 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), it is understood that there may be municipal purposes that could enable the processing of this data to the extent that it does not are purposes incompatible with the Padró's own, previously described.

Specifically, we have referred to the exercise of the powers that the local regime legislation attributes to the town councils, mainly following the provisions of articles 25 and 26 of the LRBRL (and, in similar terms, articles 66 and 67 of the TRLMRLC).

It has also been pointed out, in the aforementioned opinions, that, since 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 the residence or domicile are relevant data - a possibility also endorsed by the Constitutional Court (STC 17/2013, of January 31, cited) -, 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 present case, as we have seen, both the local regime legislation and the applicable sectoral regulations attribute to the municipalities competences in the matter of waste (article 25.2.b) LRBRL and article 42 TRLR), with special emphasis on the adoption of those selective waste collection systems that have been shown to be more efficient (article 53 TRLR).

Access to the Register in the present case would be motivated by the need to inform the residents of the municipality about the implementation of a new selective waste collection system and, at the same time, to be able to manage the distribution of the smart cards necessary to be able to start using the service (in this case, urging them to collect them from the council), actions that would be part of the development of the functions attributed to the City Council in the matter of waste. To achieve this purpose, the address data would be relevant.

Given this, it can be considered that we would be faced with a purpose compatible with that of the Register Municipal d'Habitants and, consequently, that the data processing intended by the City Council would have a legal basis.

In any case, remember that access to the Register for this purpose, by virtue of the principle of data minimization (article 5.1.c) RGPD), should be limited to the data strictly necessary to address the information letter to residents (name, surname and address).

VIII

Having said that, in the consultation it is pointed out that in this informative letter the consent of the users of the selective waste collection system will also be required to collect and process the data relating to the email and the mobile phone number.

The purpose to which the processing of the data relating to the email responds would be "in order to be able to register in the smartphone application."

As pointed out at the beginning of this opinion, users of the waste collection service are offered the possibility of using a smartphone application, which allows them to check the number of openings made , generate service incidents, consult the collection schedule or other information related to municipal waste.

Due to the information available in this application, the user's prior registration is required, which must be done by providing their email, and the validation of the registration would be carried out by the MOBA company.

In the consultation, it is pointed out that under no circumstances will the concessionaire company or the company that provides the technological solutions be able to relate the number of containers opened or the containers opened by the different cards with the personal data of the users, given that they only have access to the unique code and the card numbers associated with that code.

Carrying out the said registration by email would allow the company that provides the technological solutions (sub-processor) to be able to link the said code to other personal data of the user, such as the attributed code and information about the number of openings made. If this were true, it would be evident that the measures that pseudonymization of data requires are not adopted to guarantee the security of the custody of the additional information necessary to attribute the unique code to the user. It would not be an effective pseudonymization.

In view of this, and in the absence of more specific information in this regard, it seems that the most convenient would be for the registration of users in said application to take place through the unique code that the City Council assigns to each user and that it provides in the information letter that addresses them.

On the other hand, the purpose of processing the data relating to the mobile phone number would be "in order to participate in the project LIFE 18 GIE/IT/000156 REthinkWASTE "Rethinking municipal tariff Systems to improve urban waste governance".

It is pointed out that the main objective of this project is "to know the habits and changes in attitude before and after the change in the waste collection model, receiving information via WhatsApp and motivating participation through prizes."

Taking into account that the participation in this project, focused on the implementation of payment systems by generation, is from the municipality, from the demonstrations made it could be understood that the telephone number of the users would rather be used by the City Council in order to communicate -se with the users of the new waste selective collection system for the purposes of

know the impact caused and/or the changes generated in their lifestyle or their opinion about it.

If so, it is not superfluous to point out that the media or communication services that can be used by public administrations, either to relate to citizens, with other public administrations or even as an internal communication channel within the their own structure, they can be many and of a very varied nature: traditional means of communication (press, radio or television), the Internet, the websites of public organizations and bodies, corporate intranets, regular mail, communication by telephone, face-to-face communication, etc. . And that, regardless of the medium chosen, to the extent that its use involves the processing of personal information, this processing must be subject to the principles and guarantees of data protection (RGPD and LOPDGDD).

With regard, specifically, to the possibility of using an instant messaging system such as WhastApp, as it seems to be pointed out in the query, from the aspect of the protection of personal data we refer to the considerations made in the opinion CNS 13/2018 (available on the Authority's website), especially in legal foundations IV to VIII.

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

Conclusions

The processing of personal data described in phase 1 of the implementation of the selective waste collection system could be covered by the legal basis of article 6.1.e) of the RGPD when carried out in the exercise of the powers that in waste management matters the local regime legislation and the applicable sectoral legislation attribute to the municipality. This, as long as the principle of data minimization and article 155 of Law 40/2015, in its wording given by RDL 14/2019, is respected.

The participation of third parties in the implementation of this system, including the process of pseudonymization of the data, requires the formalization of a contract of the person in charge of the treatment and, where appropriate, of the sub-person in charge, in the terms of article 28 of the RGPD, and, where applicable, compliance with the obligations established in this regard in the LCSP.

The sending of an information letter to the residents of the municipality based on the data of the Municipal Register of Inhabitants would not pose any problems as it is a compatible purpose.

To ensure the effectiveness of pseudonymization, it would be advisable to review the registration process in the smartphone application that will be offered to users of the service, to articulate it through the assigned code.

Barcelona, May 13, 2020