

**Opinion in relation to the consultation of an aid on the obtaining and transfer of personal data in the implementation of a waste collection system, and on the possibility of creating profiles**

A letter from a city council is presented to the Catalan Data Protection Authority in which it is requested that the Authority issue an opinion on the obtaining and transfer of personal data in the implementation of a new collection system waste selection, and the possibility of creating profiles with this data.

The consultation is accompanied by a report issued by the council's waste and natural environment technician in relation to the waste collection system.

This consultation is related to a previous consultation formulated by this same City Council in which several questions related to the first phase of the implementation of this new selective waste collection system were raised, which were analyzed in the opinion CNS 6/2020 , which is available on the Authority's website <https://apdcat.gencat.cat/ca/inici>.

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

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(...)

II

The City Council in its first consultation addressed to this Authority (CNS 6/2020) expressed the desire to implement a new management and selective waste collection system in the municipality based on the access control system with identification of users in waste and organic containers, and formulated several questions in this regard.

Likewise, he pointed out that the implementation of this system would be carried out progressively in three phases, with the ultimate aim of establishing the system of payment per generation (F

Next, it defined the data treatments that were derived from the first phase of system implementation, which, broadly speaking, were:

1. Create the necessary database for the implementation of the service.

This database would be made up of certain data provided by the Metropolitan Area of Barcelona, a unique numerical code for each user and the card numbers assigned to each code, which must allow access by the users in the containers to deposit the waste generated.

2. Deliver to the company VALORIZA, concessionaire of the service, and also (from this company) to the company that provides the technological solution necessary for the provision of the service (MOBA), the unique code assigned by the City Council to each user of the service.

The purpose of this communication would be to be able to link the mentioned code to the cards that will later be provided and used by the users.

3. Use the data from the Municipal Register to send an informative letter to the residents of the municipality about the implementation of the new waste management and selective collection system, and for the purposes of obtaining their consent for the processing of data relating to:

- Email, in order to manage your registration in a phone application mobile
- The mobile phone number, in order to manage your participation in the LIFE 18 GIE/IT/ 000156 REthinkWASTE project "Rethinking municipal tariff systems to improve urban waste governance".

Having examined these treatments of personal data and taking into account the questions raised in that consultation, the Authority concluded (CNS 6/2020) that:

"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 the matter of waste management, 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 L

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 application for smartphones that will be offered to users of the service, to articulate it through the assigned code."

The City Council is now formulating a new consultation with the Authority in which it states that the real and operational needs of the new model of waste management and selective collection require that the different agents involved in its implementation must process more personal information of people users

He maintains in his consultation that the approach initially presented, which was based on the treatment of pseudonymized data, "makes it difficult and greatly overloads the tasks of

the City Council would hardly have the time and means to internalize them." At the same time he points out that, given the opinion CNS 6/2020, this pseudonymization would not seem mandatory.

Given this, it specifically raises the following question:

"If the processing of non-pseudonymized data by a third party that is intended to be carried out is legitimate and is an option that the City Council can accept according to the coverage of the data protection regulations, as long as it is duly justified to lead to carry out the functions and tasks assigned to:

- the company awarded the Contract for the road cleaning service, collection and transport of urban solid waste and supply of containers and closure and identification systems (VALORIZA), which has subcontracted MOBA, as the company that supplies the management service of information and ICT technologies for closing containers (...).

- to the company awarded the Contract for external assistance to develop communication activities for the new waste collection service, monitoring of users and the Sant Just Desvern waste collection and street cleaning service (lot1) ( ENVIRONMENTAL SYSTEMS) (...).

- to the company ARS Ambiente (as a partner of the LIFE RETHinkWaste project) and the company hired by the external assistance service to promote the KAYT strategy through incentives and prizes in the framework of the LIFE RETHinkWASTE Project (to be determined and hire).

and defined by the corresponding specifications and contracts."

The City Council points out that with all these companies a contract has been signed - or will be signed - in charge of the treatment, 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 Regulation (hereinafter, RGPD).

On the other hand, the City Council considers whether "it is legally possible to create behavior profiles with these databases", without further concreteness in this regard.

Placed in this context, and before examining the specific issues raised, it should be noted that the proposed implementation of the waste management and selective collection system presents some novelties with respect to the description of its operation made to this Authority in the previous consultation, so it is considered appropriate to make some considerations in this regard as well.

### III

As has been said, the City Council assures that the ultimate goal of the waste collection system is to implement a system of payment per generation (PXG), in such a way that the people who use the waste collection service end up paying the fee of garbage depending on the actual generation of waste and the service required for its management.

The application of a system of these characteristics is based on three pillars:

- The identification of the waste generator.
- The measurement of the amount of waste generated.
- The individual assessment.

The City Council in the first consultation addressed to this Authority (CNS 6/2020) indicated that this system would be implemented in relation to household waste, for which an access control system with identification would be used of users (using cards) in the waste and organic containers, and specified how this identification would be carried out, as well as the subjects involved and possible data flows.

Beyond that, the City Council did not provide information on the other two pillars on which a PXG system is based. This is not the way in which the City Council intends to measure the amount of waste generated by people using the service. That is to say, if it is intended, for example, to use containers with a volumetric chamber incorporated inside (volume payment system) or containers with a weighing system incorporated inside (weight payment system), two of the main alternatives for the implementation of a PXG system based, as in the case being examined, on the identification of the user (as was done in the CNS 6/2020, this additional technology allows obtaining more accurate data on user behavior patterns and is usually common in so-called "room systems"); nor the mode in which the individual assessment is intended to be carried out, once the generator has been identified and the amount of waste generated has been measured.

In this consultation, this lack of specific information is repeated about the different actions that the City Council must carry out with the final objective of establishing a PXG system in relation to the collection of domestic waste.

In fact, the City Council mentions (section c) point 5 of the report) the establishment of the "payment for generation/participation through the fair rate (that is, a rate related to the number of containers opened of organics and the rest of each user)", so it is not clear whether we are dealing with a PXG system or a pay-per-participation (PXP) system.

Although both systems provide for the establishment of a fair garbage rate, it should be borne in mind that in a pay-by-participation (PXP) system, the person using the collection service pays this rate based on their participation or use of the collection service, not based on the actual waste generated, as happens in the PXG system (therefore, in this system it may not be necessary - although it cannot be ruled out - to measure the amount (volume or weight) of waste it generates). In any case, based on the information available, in these domestic waste collection systems, the specific type of waste deposited would not be related to the identity of the people who deposited it, but only the volume or weight.

The City Council also mentions (section c) point 2 and 5 of the report) door-to-door commercial collection, which was not included in the first consultation addressed to the Authority.

In this sense, it specifies that for the fractions of rest, organic and glass, cones will be used which will have a tag (label) attached, which will allow these cones and their contents to be linked to the trade in question. Regarding the fraction of paper and cardboard, it specifies that it will be delivered without a receptacle, and regarding the packaging, with a bag. In these cases, to identify the collection, it is expected that the tag will be placed on the wall of the trade.

Therefore, in this case, the identification of the waste generator is carried out by identifying the bin through which the user delivers the waste to the door-to-door collection service, and, on other occasions, through of the information contained in the label on the wall of your establishment, depending on the waste in question.

In accordance with the Municipal Waste Ordinance of the municipality, all natural or legal persons, both public and private, and entities under article 33 of the Law are eligible to use the commercial municipal waste collection service general tax that use or occupy the premises, establishments, offices and services of all types, public and private, located in places, streets, squares or public roads where the service is provided, either as the owner of the buildings or premises, or in title of usufructuary or any other, located in the municipality of Sant Just Desvern" (article 22).

Point out that the processing of information relating to natural persons who are owners of the activity generating commercial waste remains subject to the legislation on the protection of personal data.

In this sense, it is important to ensure that the information incorporated in the tags or labels placed on the boxes or the walls of the businesses, as the case may be, incorporate the minimum information necessary to identify the people who generate the commercial waste (Article 5.1.c) RGPD ). In particular, there should be a unique code (in the same way as has been planned for the cards to be used by users of the domestic waste collection service), for the purpose of particularly avoiding unauthorized data processing.

This follows both from the principle of data minimization (Article 5.1.b) RGPD), according to which "personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed". as of the principle of integrity and confidentiality (article 5.1.f) RGPD), which requires that they be treated "in such a way as to guarantee an adequate security of personal data, including protection against unauthorized or illegal treatment and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures".

Beyond this information on the identification of the generator of commercial waste, the City Council does not specify the rest of the procedures that will be carried out to implement the fair rate, that is to say, which payment model we are facing: payment by bushel with individual counting or with predetermined frequency, or systems with identification and weighing of the bushel, for example.

To warn, for both cases (collection of domestic and commercial waste), that this lack of accurate information on all aspects of the model that is intended to be implemented prevents a careful examination of the incidence that the implementation of a focused waste management model to the payment of a fair fee may lead to the right to data protection of the affected persons.

#### IV

Having said that, from the information provided in this second consultation, the fact that the City Council specifies in more detail the formation of the waste register for residential and commercial collection (database used for the provision of the service) stands out.

Specifically, it points out that (as in the first consultation) certain data from the register available to the AMB will be used for the management of the metropolitan waste treatment fee (section c) point 4 of the report).

In the opinion CNS 6/2020 we already pronounced on the legitimacy for the communication of this data between both public administrations (FJ V), to which we refer. Even so, to emphasize positively the fact that this flow of information has been reviewed in order to adjust it to the principle of data minimization (Article 5.1.c) RGD), as was done in the aforementioned opinion .

However, it should be noted that, although the (correct) elimination of the data relating to the number of the subscription policy or supply contract of this flow or communication is verified, the data relating to the number of phone and email. Remember that its assignment would only be legal if it was necessary for the effective implementation of the selective waste collection system that is intended to be carried out, a matter that is not sufficiently clear in the documentation provided.

In turn, the City Council has agreed (and this is a novelty with respect to the first consultation) that these data received from the AMB will be cross-referenced with those contained in the Real Estate Tax (IBI) register.

It should be remembered that data processing carried out by public administrations remains subject to the principle of purpose limitation (Article 5.1.b) RGD), according to which the data must be collected for specific, explicit and legitimate purposes, and not they must subsequently be treated in a manner incompatible with these purposes.

The City Council, therefore, could only use the personal data it has for the management of the IBI for a different ulterior purpose - such as the formation of the waste register - to the extent that it is compatible with the purpose it justifies your initial collection. This follows both from Article 5.1.b) of the GDPR and from Article 6.4 of the GDPR.

In addition, it must be borne in mind that, by application of the principle of minimization (Article 5.1.c) RGD), the data from the IBI register that are treated should refer only to the data from the IBI register that are adequate, relevant and limited to what is necessary in relation to the further compatible purpose for which they are processed.

The City Council manages the IBI based on the information contained in the real estate cadastre, as well as the other documents on the variations prepared for the purpose by the General Directorate of the Cadastre, as established in article 77.5 of the Consolidated Text of the Local Treasury Regulatory Law, approved by Royal Legislative Decree 2/2004, of March 5.

It should be borne in mind that the Real Estate Registry Law (Royal Legislative Decree 1/2004, of March 5) establishes a specific regime of access to cadastral data that can enable certain data treatments by public administrations.

Specifically, article 53.2.a) of this Law provides that they can access the protected cadastral information, without the consent of the affected person, "the organs of the General Administration of the State and of the other territorial public administrations, the State Tax Administration Agency and the managing entities and common services of the Social Security, with the limitations derived from the principles of competence, suitability and proportionality."

In other words, the Cadastre Law can enable a change of purpose with regard to the processing of protected data of the cadastre by a municipality whenever it is necessary for the exercise of municipal powers that may be required, for their compliance, the processing of Cadastre data, and respect the principles of competence, suitability and proportionality referred to in the Cadastre Law.

In the present case, taking into account the data provided by the AMB, it would not seem justified, due to the information provided, to have, to cross them, other data from the IBI register.

If we compare the information provided by the City Council in the two inquiries made to this Authority, it seems that the information that the City Council intends to incorporate into the database of the waste register from the IBI register would include the cadastral reference of the properties, given that the rest of the information (identification, contact and address or property data) would be obtained by virtue of the transfer from the AMB.

The City Council does not justify in its consultation the reason why it requires having this information that uniquely identifies a property for the correct provision of the selective waste collection service or for the establishment of the fair rate, it is that is to say, for the exercise of the powers that in the matter of waste management the local regime legislation and the applicable sectoral legislation attribute to the municipality, on the basis of which the City Council can carry out those data treatments that for their compliance is necessary (Article 6.1.e) RGPD).

In view of this, it must be concluded that the use of data from the IBI register for the formation of the waste register is not justified.

In addition to all this, the City Council specifies that this database (which should only aggregate data from the AMB) will also be fed by the information generated during the other phases of the implementation of the selective waste collection service, including that generated during the provision of the service. Specifically, it is pointed out that it will incorporate:

- The information collected or generated at the municipal information points: that which derives from the allocation and distribution of the cards to the users, the email of those who wish to register in the mobile application and also the mobile phone of those who want to participate in the LIFE 18 project.
- The information related to the distribution of tags or wall tags for a commercial collection.
- The information linked to the use of the cards and the reading of the tags.

The City Council maintains that this same register will also be used to manage the participation of service users in the LIFE 18 project, which will be mentioned later.

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The City Council also specifies, in this second consultation, all the companies that participate in the implementation of the selective waste collection model and their function within the system.

Apart from the companies VALORIZA, concessionaire of the waste collection service in the municipality, and MOBA, supplier of the technological solutions necessary for the provision of the service by the company VALORIZA, which was already mentioned in the previous consultation, two more companies are mentioned:

- SISTEMAS MEDIOAMBIENTALES, SM, contracted to provide the external assistance service of monitoring, control and communication of the waste collection and cleaning contract for Sant Just Desvern.
- ARS Ambiente and another company (pending to be hired), contracted to provide the external assistance service to promote the KAYT strategy in the framework of the LIFE 18 project.

The City Council specifically raises in the consultation whether it is possible for these companies to be able to access certain data from the waste register (which are defined in table 3 of the conclusions section of the report attached to the consultation) and not only pseudonymised data (Article 4.5) RGPD).

As was made clear in CNS opinion 6/2020, since Law 9/2017, of November 8, on public sector contracts (hereafter, LCSP) is applicable in this case, it must be taken into consideration that the the same rule attributes to said companies the status of data controller (additional provision 25a). The RGPD defines this figure as "the natural or legal person, public authority, service or any other body that processes personal data on behalf of the data controller" (article 4.8).

Article 33.1 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereafter, LOPDGDD) establishes that "the access by a controller of personal data that are necessary for the provision of a service to the person in charge, it will not be considered data communication as long as the provisions of Regulation (EU) 2016/679, this organic law and its implementing rules are complied with."

The City Council declares that with these companies a processing contract has been formalized - or will be formalized - under the terms of article 28.3 of the RGPD (for the conditions that this contract must meet, we refer to the considerations made in FJ VI of CNS opinion 6/2020).

Remember that in the case of the company MOBA, this would be considered a sub-processor of the treatment, provided that the City Council, in the commission contract with the company VALORIZA, has authorized it to subcontract information management services and ICT technologies (Article 28.2 RGPD), and a specific contract has been formalized between both companies.

It should be noted that the person in charge of the treatment acts on behalf of the person in charge and can carry out the treatments assigned to him in the contract and under the conditions that are determined. In other words, the City Council can commission a processor to carry out those treatments that the City Council itself would be able to carry out. However, it should be borne in mind that the fact that one, or several, processors intervene involves additional risks that should be minimized. From this point of view, although a priori it cannot be ruled out that those in charge of the treatment may end up processing all those data that could be processed by the City Council itself to carry out the assigned activity, it is advisable to minimize the risks through, among others, of the use of pseudonymisation, whenever this is possible.



This is clear both from article 33.1 of the LOPDGDD and, especially, from the principle of data minimization (article 5.1.c) RGPD) applicable to all data processing and according to which, remember, the data subject to processing must to be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.

Initially the City Council, holder of the selective waste collection service and therefore responsible for the processing of the data linked to its provision (the register or database created for that purpose), had proposed that the companies VALORIZA and MOBA only have access to pseudonymised data.

Specifically, it had been planned (first consultation) to communicate the numerical code assigned by the City Council to each user to the service concessionaire company VALORIZA, who in turn would provide this code to their company providing the technological solutions necessary for the provision of this service (MOBA), in order to link it to the cards that would later be provided to the users and that must allow their access to the containers to deposit the waste generated.

This action was positively assessed by this Authority (FJ IV of CNS opinion 6/2020), given that the application of the pseudonymization technique to personal data allows those responsible and those in charge of treatment to reduce the risks associated with their treatment for the affected persons, as well as guaranteeing more secure data processing and compliance with the rest of the data protection requirements.

In this sense, in view of the information provided at that time about the actions that the said companies had to carry out and that involved processing personal data, it was considered that, for their compliance, it did not appear that it was necessary or relevant having to have other personal information of the users other than the mentioned code. In other words, it was considered that the City Council, with this decision to use pseudonymised data, adjusted its action to the aforementioned data minimization principle and also complied with the provisions established in article 25 of the RGPD, regarding data protection by design and by default.

The City Council is now rethinking the terms of the participation of the companies VALORIZA and MOBA in the processing of personal data linked to the provision of the selective waste collection service. It also foresees the participation of other companies.

Warn that the specific personal information to which these third parties may access will in any case be determined by the functions and/or tasks that they are required to carry out as a result of the assignment carried out by the City Council and provided that, for their exercise , it is necessary to have this information.

On this issue, the City Council points out in this second consultation that the companies VALORIZA - and MOBA - must be able to have the set of information from the waste register, that is:

- Identification, contact details and the address of each user, including the unique code assigned to users of the domestic waste collection service to be included in the electronic cards, and the number assigned to each user of the commercial waste collection service to include in the tags.

- All that information generated by the computer platform: code of the cards assigned to the user, date of registration and cancellation of the card, identification of containers opened by each user, number of containers opened by each user and number of collection of commercial waste by each user.
- The email of users registered in the mobile application.
- The mobile phone of users participating in the LIFE 18 project.

In principle, it is not appreciated that for the provision of the selective waste collection service by the company that is its concessionaire (nor by MOBA) it is essential or necessary to have the set of personal data contained in the register of waste

Taking into account the characteristics of the model of selective collection of domestic waste, based, as we have seen, on the use of closed containers and on the use of identification cards by users, it seems clear that both VALORIZA and MOBA have to be able to access the data that allows the verification of the access authorization and the identification of the user. In the first query formulated by the City Council, it was stated that this identification could be done through a random numerical code assigned by itself to the users.

Now the City Council, in order to justify access to more data from the waste register, states in this consultation (section d) point 1 of the report) that the concessionaire company, through MOBA, must " take care of the introduction of the user database into the software in order to leave the system ready and be able to distribute the cards and assign them to users during the implementation campaign", as well as that the system software of data must allow, among other functions, "to link the cards with the census of users of the containers".

There is, therefore, a change in the attributions assigned to the person in charge of the treatment by the City Council compared to what was initially planned. In accordance with the manifestations of the City Council, it entrusts VALORIZA, through MOBA, with the task of linking the cards with the people who use the service, therefore also the attribution of the numerical code that must allow univocal identification of these people in the use of the aforementioned cards.

Therefore, it seems clear that said companies must be able to dispose of, otherwise they would not be able to carry out the activity on behalf of the City Council, the rest of the identification data of the people using the service that appear in the register of waste

This does not remove the fact that, both from the point of view of the principle of data minimization and the principle of privacy by design and by default, it would have been preferable to keep the initial option of dealing with pseudonymized data.

On the other hand, the access of VALORIZA and MOBA to the identification code of the commercial establishment that must be included in the tags of the assigned boxes or on the wall of the establishment, according to the fraction of waste in question, would not raise disadvantages from the point of view of data protection.

Apart from this information, it seems clear that VALORIZA and MOBA must also be able to process all that information related to the use of the cards (number of the card itself, dates of registration and cancellation of the card in the system, number of openings of containers by each user and identification of these containers) and/or with the reading of the tags (number of collections), given that this is information that is generated during the provision of the service and that is part of the object of the treatment order.

The City Council also points out in the consultation that these companies must be able to access the email of service users registered in the mobile application.

VALORIZA, through MOBA, makes available to the City Council the application for mobile phones BitPAYT, in order to encourage the participation of citizens and businesses in the selective collection of waste.

The City Council points out that through this application users will be able to consult the number of openings they have made, generate incidents of the waste service and road cleaning and also be able to consult the schedule of waste collection and other information related to waste municipal. It should also be noted that this application requires prior user registration, which must be done by providing an email, and that registration validation is carried out by MOBA.

Given this, I could consider the access of said companies to the e-mail of service users registered in the mobile application justified.

Finally, in relation to the data relating to the mobile phone of the users who participate in the LIFE 18 project and which will also be included in the waste register, it should be noted that, given the information provided with the consultation, it is not appreciated that these companies must be able to have this information for the provision of the waste collection service on behalf of the City Council.

Regarding the company SISTEMAS MEDIOAMBIENTALES, SM, the City Council points out that, for the provision of the external assistance service of monitoring, control and communication of the waste collection contract, it must be able to have:

- The identification, contact details and address of each user, including the unique code assigned to users of the domestic waste collection service to be included in the electronic cards, and the number assigned to each user of the waste collection service commercials to include in the tags.
- All that information generated by the computer platform: code of the cards assigned to the user, date of registration and cancellation of the card, identification of containers opened by each user, number of containers opened by each user and number of collection of commercial waste by each user.

The City Council points out in the consultation (section d) point 2 of the report) that corresponds to this company, in coordination with the concessionary company of the service:

- The monitoring of the participation and the resolution of incidents of the users in the framework of commercial and domestic collection.
- The preparation of participation reports, statistics and other indicators of the result of collection and operation of the system.
- Education, communication and awareness-raising activities of the new collection service and other services, which includes, among others: o "registration spots (that is, linking the card codes to the database of 'users that starts from the AMB base) of the people who use the Platform

Mawis (with all the data that is necessary) that is enabled for the management of the closing of the containers, the management of data protection protocols, the delivery of the identification elements (cards) linked to the users" and the "management

- database of users and distribution of identification elements outside the implementation period of the different zones: registrations, terminations, profile changes, loss/breaking of cards, etc.”
- or "1 initial visit to all commercial establishments and equipment to take the census of users and update information.”
  - o "Make the registrations, link the chipped pods to the user database and the management platform."

Warn that for the fulfillment of some of the indicated functions such as, for example, the monitoring of participation, the preparation of reports or statistics, etc. it would not be necessary to have information that allows the identification of the users of the selective collection service for both domestic and commercial waste.

Beyond this, it seems clear that for the resolution of possible incidents related to the provision of the collection service, SISTEMAS MEDIOAMBIENTALES, SM must be able to access both the information of the users and that generated during the provision of the service included in the waste register.

Likewise, for the development of education, communication and awareness-raising activities for the new collection service, the need to have the identification and contact data contained in the waste register cannot be ruled out (for example, for carrying out information campaigns on the model of selective waste collection aimed at users of the service).

With regard specifically to the registration tasks of the users, apart from the fact that these actions do not seem to fit into the concept of education, communication and awareness activities of the new collection service, it seems that the linking of the codes of the cards with the user census referred to is an action that, according to the information available, corresponds to VALORIZA through MOBA. Therefore, it would be good to clarify this aspect.

With regard to the company ARS Ambiente, the City Council points out that, for the provision of the external assistance service to promote the KAYT strategy within the framework of the LIFE 18 project, it must be able to have:

- The unique code assigned to users of the domestic waste collection service.
- The information generated by the computer platform consists of the code of the cards assigned to the user, the date of registration and cancellation of the card, the identification of the containers opened by each user and the number of containers opened by each user
- The mobile phone of the users participating in the project.

In the consultation the City Council states (section d) point 3 of the report) that it participates in the LIFE Project 18 GIE/IT/000156 RETHINKWASTE "Rethinking municipal tariff systems to improve urban waste governance", which has as its main objective to know the habits and changes in attitude of the users before and after the change in the waste collection model.

It is also intended, with this project, to incentivize and motivate the users so that they separate waste more and better without the need to penalize them through the fair rate (KAYT strategy). In this sense, it is expected that users can accumulate

"eco-points" for different actions (registering in the project, receiving informative messages about the use of the containers they have made, sending questions, etc.) and obtaining prizes and bonuses in return.

In view of the mechanics of the KAYT strategy of the LIFE 18 project, it seems clear that the company entrusted by the City Council with the promotion and management of user participation must be able to have the code assigned to the user person and the information generated by the system in relation to the use of the cards assigned to this person (number of containers opened, type of container, date, time), as well as their mobile phone, when foreseen as to contact information between the participating user and the company.

Therefore, in this case, ARS Ambiente's access to the waste register information proposed by the City Council in the consultation could be said to comply with the principle of data minimization (Article 5.1.c) RGPD) and therefore to the data protection regulations (article 33.1 LOPDGDD).

In any case, and without prejudice to the fact that the considerations that have just been made can serve as guidance, regarding the determination of the specific data that are appropriate to carry out the treatments carried out by each of the companies involved in the system, it would be necessary to have detailed information on each of the functions entrusted to them.

## VI

The consultation also refers to the possibility of creating behavior profiles with the data that, it must be understood, are contained in the waste register.

As we have seen, the waste register constitutes the database created by the City Council for the management of the fee for the provision of the selective collection service of domestic and commercial waste in the municipality, which is determined based on the real waste generated by people using the service (PXG) or from their participation or use of the service (PXP).

This data processing, as it was agreed in the CNS 6/2020, could be understood as based on the legal basis of article 6.1.e) of the RGPD, in attention to the powers that, in the matter of management of waste, current legislation attributes to municipalities.

All in all, it seems clear that these types of selective waste collection models, which allow identifying the people who use them and measuring or quantifying their waste during a certain period of time (in this case, as set out in the tax ordinance), can give rise, from the data protection side, to the elaboration of profiles or patterns of behavior of these people.

Article 4.4) of the RGPD defines profiling as "any form of automated processing of personal data consisting of using these data to evaluate certain personal aspects of a natural person; in particular, to analyze or predict aspects related to the professional performance, economic situation, health, personal preferences, interests, reliability, behavior, location or movements of that person."

In this case, from the analysis of the data generated by the computer system used to provide the service (date, time, number of openings, type of container), together with the rest

of identifying data contained in the waste register, it could be possible to establish the routines and/or preferences of the people affected in the use of the selective collection service for domestic waste (if the waste is always deposited in the same time slot, which waste is recycled more or less easily, etc.). In other words, to evaluate certain aspects of the behavior of these people.

The consultation does not clearly specify the purpose for which behavioral profiles are intended to be drawn up with the data from the waste register, nor the possible consequences of the drawing up of these profiles, if applicable, for the user.

In a case like the one examined, a purpose to which these behavioral profiles of people using the waste collection service could respond could be the creation of participation reports, statistics and other result indicators collection and operation of the implemented system.

However, for the achievement of this purpose, it could be sufficient to process anonymized data, in such a way that the users of the service are not identified or identifiable (consideration 26 RGPD). If so, it would be necessary to opt for the creation of anonymized profiles, whenever possible (principle of minimization).

Beyond this, it must be taken into account that the data protection regulations recognize the right of the affected person not to be the subject of an automated decision, including profiling, that produces legal effects on him or that the significantly affected in a similar way (article 22.1 RGPD). The creation of profiles is only allowed, with a certain exceptional character, in the three cases provided for in article 22 of the RGPD and with the requirements and guarantees

"1. All interested parties will have the right not to be subject to a decision based solely on automated processing, including profiling, that produces legal effects on them or significantly affects them in a similar way.

2. Section 1 will not apply if the decision:

a) is necessary for the celebration or execution of a contract between the interested party and a data controller; b) is authorized by the Law of the Union or of the Member States that applies to the person responsible for the treatment and that also establishes adequate measures to safeguard the rights and freedoms and the legitimate interests of the interested party, or) is based on the explicit consent of the interested

3. In the cases referred to in section 2, letters a) and c), the person responsible for the treatment will adopt the appropriate measures to safeguard the rights and freedoms and the legitimate interests of the interested party, at least the right to obtain human intervention on the part of the person in charge, to express his point of view and challenge the decision.

4. The decisions referred to in section 2 will not be based on the special categories of personal data contemplated in article 9, section 1, unless article 9, section 2, letter a) og) applies, and there have been taken adequate measures to safeguard the rights and freedoms and legitimate interests of the interested party."

Bearing this in mind, it is necessary to analyze the possibility that the preparation of these behavior profiles is related to the LIFE 18 program in which the City Council participates.

In the report attached to the consultation (section c) point 3) it is pointed out that in the letter addressed to all the addresses in the municipality explaining the new waste collection system, the

user persons, among other aspects, "on all issues related to the processing of data and profiling of behavior that involves joining and participating in the LIFE Project".

As we have seen, the aim of the LIFE 18 project is to know the habits and changes in attitude of the users before and after the change in the waste collection model in the municipality, through a system of incentives and prizes

To this end, the City Council has provided that the company in charge of managing participation in the project will be able to access the waste register, specifically, the data generated by the IT platform on the number of container openings made by the same card (therefore, the same user) and the type of container that corresponds to these openings (rest or organic).

The mere participation in the project, which becomes voluntary for the people who use the collection service, seems to include in itself the elaboration of behavior patterns for the people who use it when it comes to recycling, for the purposes of 'analyze if this varies in attention to the incentives that are proposed or received. Patterns of behavior that would be drawn up, in any case, from pseudonymised data (Article 4.5) RGPD).

This action could fall within the reasonable expectations that the affected person may have regarding the processing of their data at the time when they give their consent to participate in the project in question, as long as the information provided by the City Council in this regard includes detailed information on the terms of participation in the project and the implications that this may entail from the point of view of data protection (Article 13.2.f) RGPD).

To the extent that this treatment would have the consent of the affected persons, which should be obtained under the terms of article 22.2.c) of the RGPD, it could be said that it would be in accordance with the regulations of data protection.

Point out that in the report attached to the consultation (section c) point 3) the City Council also points out that in the aforementioned letter addressed to all homes in the municipality explaining the new waste collection system, people will be informed users, among other aspects, "on all issues related to the processing of data and profiling of the behavior involved in the use of the App".

However, it is not sufficiently clear from these manifestations for what purpose these behavior profiles will be drawn up or if these profiles could have consequences for the user. This prevents us from making a specific statement about its suitability.

Having said that, one possibility would be that the elaboration of these behavior profiles is linked to the own management of the fair garbage rate.

As we have seen, in a PXG or PXP system the rate that users of the selective waste collection service have to pay is determined depending, respectively, on the waste they generate or their participation in the service. It is intended, with these systems, to reward those citizens and businesses that make an effort to reduce their waste and separate it correctly, who in return obtain a bonus or reduction in the payment of the fee.

The establishment of this bonus seems to be carried out by measuring the amount of waste generated or the contributions made to the service by the users, that is to say, by examining the behavior shown by these people in recycling their waste.

The preparation of this type of profile can have significant negative effects on the person using the waste collection service, so the provisions of article 22 of the RGPD, mentioned above, should be taken into account.

This article, in its section 2.b), admits the possibility that a rule with the rank of law enables this type of treatment, provided that adequate measures are foreseen to safeguard the rights, freedoms and legitimate interests of the interested party.

Current waste legislation establishes that "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 appropriate to the characteristics of their territorial scope" (article 53.1 of the Consolidated Text of the Waste Regulatory Law (TRLR), approved by Legislative Decree 1/2009, of July 21).

Also that, in order to reduce the production of waste, the competent administrations must, among other actions, promote "the application of the best available technologies that favor the reduction of waste (...)", establish "measures economic and fiscal measures aimed at promoting the reduction of waste production, treatment to reduce its danger, material recovery and recycling" (Article 10 TRLR), as well as "promoting active participation in actions to reduce the production of waste and its dangerousness and in the implementation of selective collection" (article 12.b) TRLR).

However, the TRLR does not specify what types of measures must be adopted in order to promote the reduction of waste production and/or selective collection, nor, therefore, whether these measures must involve the preparation of behavioral profiles. Therefore, it must be remembered that in any case the creation of profiles that have legal effects or significant effects on the affected persons must comply with the provisions of article 22 GDPR.

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

## Conclusions

The use of data from the IBI register for the constitution of the waste register would not in the present case conform to the principles of purpose limitation and data minimization.

A careful examination of the feasibility of the planned access to the waste register by each of the companies involved in the selective waste collection model would require having detailed information on each of the functions entrusted to them as a result of the order carried out in each case by the City Council.

In the event that the development of behavioral profiles with the data from the waste register leads to the taking of automated decisions that produce legal effects on the person



**user of the service or that significantly affect it in a similar way, the provisions of article 22 of the RGPD must be taken into account.**

**Barcelona, November 9, 2020**

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