CNS 51/2020

Opinion in relation to the consultation formulated by a supra-municipal entity on the communication of data for the creation of a municipal fee for the selective collection of waste

A letter from the Data Protection Delegate of a supra-municipal entity is submitted to the Catalan Data Protection Authority in which it is requested that the Authority issue an opinion on the possible communication of data from the Metropolitan Tax Register Waste treatment in a town hall for the creation of the municipal fee for the selective collection of waste.

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

I

(...)

II

The supra-municipal entity states in its consultation that, within the scope of collaboration with the City Council (...), the possibility has been raised that the fiscal register for the rate of selective collection of municipal waste 'elaboration based on the data available to the entity on the taxpayers of a metropolitan rate, which is associated with the collection of the drinking water supply service provided by the entity to metropolitan municipalities.

The entity states that they have doubts about the possibility of communicating this data without the consent of the people affected, and whether it can be understood that we are dealing with compatible purposes. In turn, it considers what data should be provided in the event that its communication between both public administrations is considered legitimate.

It should be noted that the issue raised in the present consultation is a matter on which this Authority has already pronounced previously, specifically, in opinion CNS 6/2020 (which is available on the website https://apdcat.encat.cat/ca/inici), issued in relation to a query formulated on the implementation of a new management system and selective collection of waste in a municipality, to which the request for an opinion refers.

In this opinion, and among other issues, an analysis is made of the legitimacy of said communication of data, as well as of the compatibility between purposes, based on the information provided at that time by the consulting Council (FJ V). This analysis would continue to be valid in the present case, although it must be completed with the information provided by the metropolitan entity in the present consultation.

III

As agreed in FJ V of the CNS opinion 6/2020, the intended communication of data between the entity and the City Council, for the purposes of constituting the necessary database for the

provision of the selective waste collection service (which covers the establishment of the corresponding fee), constitutes data processing which, in order to be considered lawful (art. 5.1.a RGPD), requires the concurrence of any of the legal bases established in data protection legislation (Article 6 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection Regulation (RGPD)).

In this sense, and in the absence of consent from the affected persons, the Authority points out that the legal basis of article 6.1.e) of the RGPD, consisting in the fact that the processing of data is 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 in charge of the treatment",* could protect in this case the transfer of data, to the extent that a rule with the rank of law that attributes competences to the municipality in a matter would apply for the exercise of which it may be necessary to have the personal information referred to in the query (database of the metropolitan tax).

We refer, specifically, to the powers that, in the matter of waste management, the local regime legislation and the applicable sectoral legislation attribute to the municipalities, as is clear in FJ III of this same opinion CNS 6/2020:

"According to 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. To reduce the production of waste and its danger, the following must be encouraged:
*a) **The application of the best technologies available 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.*

(...)."

(...)

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."

However, as stated in this same opinion CNS 6/2020 (FJ V) it is not enough that there is a legal basis to be able to process personal data, but that the data processing carried out by the public administration are also 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 they must not be subsequently treated in a manner incompatible with these purposes.

For this reason, in order to consider the communication of data between both public administrations lawful, it is necessary that the purpose of the treatment to which the
data is compatible with the purpose for which they were initially collected.

This is clear both from the same article 5.1.b) of the RGPD and from article 6.4 of the RGPD, which establishes that:

"4. When the treatment for a purpose other than that for which the personal data was collected is not based on the consent of the interested party or on the Law of the Union or of the Member States that constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives indicated in article 23, paragraph 1, the person responsible for the treatment, in order to determine whether the treatment with another purpose is compatible with the purpose for which the personal data were initially collected, will take into account, among other things:

a) any relationship between the purposes for which the personal data have been collected and the purposes of the subsequent treatment provided;
b) the context in which the personal data have been collected, in particular with regard to the relationship between the interested parties and the controller;
c) the nature of personal data, in particular when special categories of personal data are treated, in accordance with article 9, or personal data relating to criminal convictions and infractions, in accordance with article 10;
d) the possible consequences for the interested parties of the planned subsequent treatment;

e) the existence of adequate guarantees, which may include encryption or pseudonymization."

In accordance with the provisions of article 6.4 reproduced, the processing of data is considered lawful for a different ulterior purpose when the consent of the interested party is available or there is a rule with the rank of law that protects the treatment in order to achieve the objectives of article 23.1 of the RGPD, and also in those cases in which considers that the subsequent treatment is compatible by application of the criteria listed in the same article.

At the same time, the communication of data should also conform to what is established in article 155 of the 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 October 31, by which urgent measures are adopted for reasons of public security in matters of digital administration, public sector contracting and telecommunications (hereafter, RDL 14/2019), according to the which:

"Article 155. Data transmissions between Public Administrations.

1. In accordance with the provisions of Parliament Regulation (EU) 2016/679 European Union and of the Council, of April 27, 2016, relating to the protection of persons physical with regard to the processing of personal data and the free circulation of these data and because of the repeal of Directive 95/46/ CE and Organic Law 3/2018, of December 5, on the Protection of Personal Data and the guarantee of digital rights and its implementing regulations, each Administration must provide 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 maximum security guarantees, 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. From in accordance with the provisions of article 5.1.b) of Regulation (EU) 2016/679, no will consider the subsequent processing of the data incompatible with the initial purposes personal data for archiving purposes in the public interest, scientific research purposes e historical or statistical purposes.

3. Apart from the case provided for in the previous section and as long as las leyes especiales applicable to the respective treatments do not expressly prohibit the treatment ulterior of the data for a different purpose, when the Public Administration transferee of the data intends the subsequent treatment of the same for a purpose that he deems compatible with the initial purpose, he must communicate it beforehand to the Public Administration cedent to the effects that this can verify said compatibility The ceding Public Administration may, within ten days oppose motivatedly When the transferring Administration is the Administration General of the State may in this case, exceptionally and in a motivated manner, suspend the transmission of data for national security reasons as a precautionary measure for the time strictly indispensable for its preservation. While the Public Administration transferor does not communicate its decision to the transferee it will not be able use the data for the new intended purpose.

The cases in which the treatment are excluded from the provisions in the previous paragraph for another purpose other than that for which the personal data was collected is provided for in a standard with the rank of law in accordance with the provisions of article 23.1 of Regulation (EU) 2016/679."

For this reason, in the absence of the consent of the affected persons and of a rule with the rank of law that provides for the communication for this purpose, it is necessary to analyze whether the ulterior purpose

pretense in the present case may be compatible from other elements other than said consent.

As indicated in the opinion CNS 6/2020 (FJ V), it would correspond to the metropolitan entity check the compatibility between purposes (Article 6.4 RGPD and Article 155 Law 40/2015) for the communication of the data, based on the information provided by the City Council in this regard.

IV

For the purposes of carrying out this compatibility check, it should be remembered that the consulting entity is the public administration of the metropolitan area of Barcelona, which is made up of 36 municipalities, including the municipality requesting the data.

In accordance with article 14 of Law 31/2010, of August 31, this administration exercises powers in waste management, such as treatment, recovery and disposal of municipal waste (section D, letter a)) or the coordination of municipal waste collection systems (section D, letter b)).

Apart from the competences mentioned in the matter of waste management, the entity also exercises competences in the matter of water, such as the provision of drinking water distribution service to the consumer (article 14.C, letter a) Law 31 /2010), which is carried out through concessions with certain supply companies.

The entity points out in its consultation that, in relation to this responsibility for coordinating the municipal systems of municipal waste collection, *"it offers support in the development of selective waste collection management to those metropolitan municipalities that raise the possibility to develop this service".*

He adds that, for this purpose, an agreement is signed between the administrations concerned, which, among other provisions, includes the following:

> *"Ninth.-* ***(...) will support the town councils in the creation and preparation of the tax register for the collection fee.*** *In accordance with current regulations, collaboration mechanisms will be carried out with the aim of aligning the respective tax registers (tax register of the City Council's collection fees and the tax register of the City Council's tax) to the reality of the use of the respective collection and treatment services and the possible Single Metropolitan Common Register at the time of its creation."*

As the entity points out, the said agreement does not expressly contemplate the communication of personal data to support the creation, in this case, of the tax register for the selective waste collection rate of the municipality. However, the possibility of communicating the required data cannot be ruled out, taking into account the authorization available to both administrations and the compatibility of the respective purposes.

The database subject to transfer (metropolitan tax register) is linked to the provision of the water supply service to the municipalities of the metropolitan area, one of which is the municipality requesting the data. In the cost of this service, and by virtue of the entity's powers in the matter of waste, the metropolitan fee for the treatment of municipal waste is also reflected, among other tax concepts.

For its part, the City Council intends to use this data from the aforementioned rate register for the establishment of the municipal register of waste, this is from the database necessary for the implementation of a selective waste collection system which, in the end, must

lead to the establishment of the system of payment by generation, that is to say, to the collection of a fee for the provision of this service.

The entity points out in the consultation that *"the purpose of the fees is different. The metropolitan rate applies an amount on water consumption for the joint management of waste while the rate of Selective Collection of Municipal Waste is reflected based on the waste generated individually and the selective collection service."*

Although the Metropolitan Rate is determined based on water consumption and the new municipal rate based on the volume or weight of the waste generated, it must be borne in mind that both rates respond to the same purpose, which is the maintenance of the cost involved the management and treatment of municipal waste. In other words, both rates are part of the same service (the collection and treatment of waste (even if the legislation in force attributes different powers to the entities involved).

In accordance with the fiscal ordinance regulating metropolitan fees for the treatment and disposal of municipal waste, the metropolitan fee for waste treatment is a fee that contributes to the correct management and treatment of municipal waste (article 1), specifically, by means of this fee the provision of the metropolitan service for the management of compulsory municipal waste generated at private residences (chapter II) and the provision by the entity of complementary municipal or industrial waste management services similar to municipal taxes not generated at private homes (chapter III).

In accordance with the municipality's waste ordinance, the municipal waste collection and treatment system will tend to be financed primarily with finalist contributions from the people and user entities with the aim of making explicit this part of the social cost of waste, for which the City Council will provide for the establishment of the rates corresponding to the provision of the various services of collection, transport, recovery and treatment of municipal waste (article 12).

Bearing in mind, therefore, that the processing of the data subject to assignment by the entity responds to the collection of a fee in the matter of waste and that the objective of his communication to the City Council would also be the collection of a municipal fee in the matter of waste, it can be said that there is a certain relationship between the purposes for which data have been obtained and the purposes of the intended subsequent treatment (Article 6.4.a) RGPD).

It is also necessary to take into consideration the nature of the data subject to communication (Article 6.4.c) RGPD).

According to the query, the data contained in the metropolitan tax register are merely identifying personal data (name, surname, DNI, NIE or passport number) and those relating to the domicile (address), as well as those relating to the tax .

In reality, data of a tax nature would also be being communicated, given that the identification of the subjects liable for the metropolitan rate would be being communicated. On this issue, it should be borne in mind that despite the special protection regime that tax legislation grants to this type of data, the tax legislation itself foresees the possibility of communicating tax data to collaborate with other tax administrations for the purposes of compliance of fiscal obligations within the scope of their powers.

It is worth remembering, at this point, that the data treatments carried out by the public administration must conform to the principle of data minimization (Article 5.1.c) RGPD), so that only the communication of data that is adequate, relevant and limited to what is necessary in relation to the purpose for which it is communicated.

This, transferred to the case at hand, implies that the compatibility of purposes could only operate with respect to the data strictly necessary for the correct identification of the users of the selective waste collection system (subjects liable for the corresponding municipal tax), that is to say , the identification and address data contained in the metropolitan tax register.

Being so, its treatment for these ulterior purposes should not entail a special impact on the right to data protection of those affected (Article 6.4.d) RGPD).

On the other hand, taking into account that we are dealing with a communication of data towards one of the municipalities that make up the metropolitan area and that the data is linked to the provision of a public service, in this same municipality where it has repercussions a waste fee, the possibility that the municipality may use this same data for the provision of another linked public service (in fact, it is a service which complements the service offered by the entity) in the municipality which also entails the payment of a waste fee.

For all that, and with the information available, it can be considered that we are dealing with compatible purposes, so the intended communication of data, limited to identification data and address, would be in accordance with the protection regulations of data

In accordance with the considerations made so far in relation to the proposed query, they are made next,

Conclusions

The communication of the identification data and the address of the register of the metropolitan tax of waste treatment to the City Council of Sant Just Desvern, in order to constitute the register of the municipal waste tax, can be considered legitimate when dealing with of compatible purposes (Article 6.4 RGPD) in the exercise of the respective powers in the same matter.

Barcelona, January 26, 2021