CNS 60/2021

Opinion in relation to the consultation formulated by a city council on the implementation of a door-to-door waste selective collection system

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 adequacy of the door-to-door waste selective collection system to data protection regulations which is planned to be implemented in the municipality.

The inquiry is accompanied by the following documentation:

1) **Letter presented by a municipal group in which it requests the City Council to formulate the consult this Authority.**

2) **Edict of initial approval of the municipal ordinance for the selective collection of waste, which includes a link to the full text.**

3) **List of technical prescriptions that govern the contracting of the collection service i transport of municipal waste and the road cleaning service.**

4) **Report issued by the council's environmental technical services in relation to the conditions for providing the waste collection service and the protection of personal data.**

Having analyzed the query and the documentation that accompanies it, in view of the applicable regulations in force, and in accordance with the report of the Legal Adviser, I issue the following opinion.

I

(...)

II

In the report of the technical area that accompanies the consultation, it is stated that the City Council has planned the implementation of a new selective waste collection system in the municipality based on the door-to-door collection method.

Selective door-to-door collection consists of delivering the waste to the municipal collection service in front of the door of the house, on certain days and times determined for each fraction. Through this model, it is possible to collect all fractions with collection on the public street (waste, organic, glass, packaging, and paper and cardboard), or the collection of only some fractions, which at least they must be waste and organic, keeping the containers for the other fractions.

For the present case, the following is noted:

- **Door-to-door collection will be carried out for domestic, commercial and equipment waste using containment elements (buckets, bins or containers).**

- These containment elements include an attached UHF RFID TAG (label), which is associated with a code that identifies the fraction collected and the home, business or equipment generating the waste.

- The code consists of an alphanumeric sequence of 12 digits AAXXXRYYYYY, where AA is equivalent to the initials of the municipality; XXX equals the volume of the contribution element; R is equivalent to the initial of the type of waste collected; and, YYYYYY equals 6 numeric digits of user code.

- Each emptying will be recorded by reading the RFID tags of the containment elements.

- For those cases in which door-to-door collection is not technically feasible (dispersed homes), the creation of closed contribution areas and mini-areas is planned, where the appropriate containers will be placed.

- These areas will have an access control system and authorized neighbors will be given the corresponding magnetic element (card or electronic proximity key) that will allow them access.

- A record will be taken of each access by each user, with indication of the date and time and the code incorporated in the card or key ring.

- All the recorded data (both those related to the RFID tags and those of access control) will be transferred online to a software, which integrates the necessary tools for its management. It also allows you to obtain information from the service based on reports and statistics.

- There will also be a service application, which will allow the management of registrations, cancellations and the necessary modifications at the association level of contribution and identification elements, as well as registering and managing incidents linked to the provision of the service

- This service application will be linked bidirectionally with the management software, in such a way that all the information will remain centralized in the software.

- Users will be able to voluntarily use an application for smartphones (Citizen App), which allows them to receive basic information about the service, generate incidents, consult participation data, request collections, etc.

- The provision of the selective collection service corresponds to the company (...), by contract formalized on 2/11/21, which has a third company (...) that provides the necessary technology for the provision of the service.

III

The objective sought by the City Council with the implementation of the new door-to-door selective collection model in the municipality is to achieve the objectives of prevention at source, to encourage preparation for reuse, to increase the valorization and to progressively suppress the disposal of recoverable waste that is marked by European legislation and the Waste Agency of Catalonia in this matter. These types of models make it possible to identify the generator of the waste and, therefore, also enable the implementation of fairer inspection systems.

Before entering into the analysis of the specific waste collection model described in the consultation, it should be noted that the objects, substances and products that can be deposited in a waste container (be it a bag, a bucket or a container large capacity) can offer a considerable volume of information about the people who live in a certain address, which can even affect aspects of their privacy. It may reveal consumption habits, waste disposal habits, food or other preferences, or even information linked to special categories of data, such as health data (including addictions), political trends, religious, etc.

The fact that waste is deposited in such a way as to identify its origin entails an undeniable impact on the protection of personal data and people's privacy, even if it is done through containers that are coded with a code that does not can be directly identified by third parties. This risk clearly increases in the event that the coding system is not sufficiently secure or that the coded containers must be deposited directly on the public road (for example in the case of single-family homes) so that the its origin

Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD) requires a privacy impact assessment (AIPD) "when it is likely that a type of treatment, in particular if it uses new technologies, by its nature, scope, context or purposes, entails a high risk for the rights and freedoms of physical persons" (article 35.1). And it expressly mentions as a case in which an impact assessment will need to be carried out, the systematic and comprehensive assessment that allows the elaboration of profiles (article 35.2.a)) or the large-scale processing of special categories of data (article 35.2 .b)).

In relation to this impact assessment, Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD) lists, in its article 28.2, some cases in which considers likely the existence of a high risk for the rights and freedoms of people, among which, "when the treatment could generate situations of discrimination, usurpación of identity or fraud, financial losses, damage to the reputation, loss of confidentiality of data subject to professional secrecy, unauthorized reversal of pseudonymization or any other significant economic, moral or social harm to those affected" (letter a)) or "when the treatment involves an evaluation of personal aspects of those affected with the purpose of create or use personal profiles of them, in particular by analyzing or predicting aspects related to their performance at work, their economic situation, their health, their preferences erencias or personal interests, your reliability or behavior, your financial solvency, your location or your movements" (letter d).

In addition, to make it easier for data controllers to identify those treatments that require an AIPD, the RGPD provides that the control authorities must publish a list of the treatments that require an AIPD. This Authority has published a List of types of data processing that require impact assessment related to data protection which can be consulted on the website of this Authority.

In the present case, it must be taken into account that the circumstances to which mention has been made would concur.

A selective collection model such as the one proposed is based on the identification of the waste generator through the identification of the bucket or bin through which the user delivers the waste to the door-to-door collection service. Despite the fact that the identification is carried out through a coding system, it must be taken into account that the collection of the containment elements takes place in front of the door of the home. This fact increa

of the waste generator by any person resident in the area or passing through the public road.

And not only that, it also allows (while the bucket remains on the public road) that anyone can have access or obtain various information from the generator of the waste which, both alone and as a whole, can be of particular sensitivity (type of waste, amount and therefore also possible number of residents, habits, preferences and even possible diseases, etc.). Its disclosure could have important consequences for the intimate or private sphere of the user, it could even cause social harm.

In addition, these types of collection model make it possible to know and even evaluate over a long period of time the behavior of the people who are users, given the recording of the data linked to the reading of the labels incorporated in the containment elements or, where appropriate, the use of cards or electronic key fobs for access to containers. In other words, they allow the creation of profiles on the people who are users.

Consequently, in this context it is clear the need to carry out, prior to the choice of the selective collection model in question, an AIPD, which allows to know the impact for data protection that may result opt for one or another of the available models. Thus, for example, the implications for the protection of personal data derived from a model managed from smart containers in principle is presented as much less invasive from the point of view of the right to data protection than other models based on the deposit of waste on the public road in identified bags or in buckets that can be easily linked to a certain property. In any case, this is an analysis that should be done in the light of the specific characteristics of the analyzed model, and of the available alternatives, within the framework of the AIPD. For these purposes, it may be of interest to consult the Practical Guide on impact assessment relating to data protection.

Obviously the impact on the right to data protection is not the only criterion to take into account when opting for one or another model of selective waste collection. Other criteria must be taken into account such as the environmental impact, the population, urban planning, economic and social characteristics of the municipality, etc. but it is clear that the right to data protection will also have to be part of the previous analysis to be carried out by the City Council. That's why it's important to carry out an impact assessment related

Make it clear that, if, once the AIPD has been carried out, the existence of a specific model of selective collection that is more guaranteeing or with lower risks for the protection of user data and the rest of the evaluated conditions allow it (environmental , economic, urban planning, population, etc.), it would be necessary to opt for the implementation of this model.

IV

Article 11 of the municipal ordinance on the selective collection of waste, pending final approval, states that "the City Council can establish payment per generation (PxG), a system that must allow the actual generation of waste to be calculated for each home or business and define the amount of the fee based on the amount and type of waste generated, based on the "polluter pays" principle. All this, in accordance with the Fiscal Ordinance ap

For its part, in the Technical Prescriptions that govern the contracting of the service, it is foreseen that the data management software must be ready "for the introduction of payment by generation at any time of the contract" (point 29) .

In view of these forecasts, the new model of selective collection that is to be implemented may have as its ultimate objective the application of a fair rate system, so that the people who use the waste collection service end up paying the rate of 'garbage based on your actual generation of waste and/or your participation or use of the service.

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

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

It should be noted that, of these three pillars, the documentation sent with the consultation only provides information -relevant from the data protection aspect- on how the identification of the waste generator will be carried out, as well as the subjects involved and possible data flows.

Beyond this, the City Council does not provide information on the other two pillars on which a PXG system would be based. This is neither the mode in which the City Council intends to measure the amount of waste generated by the people using the service, 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 any case, based on the information provided about the operation of the selective collection system, it seems that we are rather facing a pay-by-participation system (PXP), despite referring to a PXG system. Although both systems provide for the establishment of a fair garbage fee, it should be borne in mind that in a PXP system the person using the collection service pays this fee based on their participation or use of the collection service (number of collections or emptying and/or number of containers opened), and not based on the actual waste generated, as happens in the PXG system. Therefore, in that system (PXP) it may not be necessary - although it cannot be ruled out either - to measure the amount (volume or weight) of waste it generates.

It should be noted 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 waste management model focused on the payment of a fair fee can lead to the right to data protection of the affected persons.

v

The implementation of a selective waste collection system such as the one proposed involves the processing of certain personal information of the people who use it.

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".

It must be taken into account that, as is apparent from article 6.3 of the RGPD and expressly included in article 8 of the LOPDGDD, data processing can only be considered based on the legal basis of article 6.1 .e) of the RGPD when so established by a rule with the rank of law.

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 the following:

> **"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 the following:

> **"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 the following:

> **"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. (...).**
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> **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 collection and treatment system of metropolitan waste, 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 of 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 res

VI

It must be taken into consideration that the City Council, as owner of the selective waste collection service, is responsible for the processing of data linked to its provision (article 4.7) RGPD), therefore, of the register or database created or used for that purpose.

This register must in any case comply with the principle of data minimization (article 5.1.b) RGPD), in such a way that the data that make it up are adequate, relevant and limited to what is necessary in relation to the purpose for which they are processed. In this case, the data necessary for the correct provision of the service.

The documentation sent does not expressly specify which register or database the City Council will use to provide the service or, if applicable, how its training will be carried out. However, it is noted that the City Council makes the following information available to the company awarded the service:

a) Domestic waste rate template, where the cadastral reference data, address, rate (code) and description of the waste rate appear.

b) Pre-form of the commercial waste rate, where the cadastral reference data appear, address, type of activity, rate (code) and bonuses.

Therefore, it can be understood that these would be the standards that the City Council wants to use for the provision of the service. It is not clear, however, given its name of "prepadró", if these aggregate all the information subject to treatment.

In any case, taking into account the data described, from the point of view of the principle of data minimization, it is not clear the reason why the treatment of the cadastral reference of the properties is foreseen for the correct provision of the selective collection service of waste or for the establishment of the fair rate.

In the consultation, it is pointed out that the codes incorporated in the TAG tags of the contribution materials or in other electronic elements (such as the key to open the closed areas) are linked to the cadastral references where the waste is generated. Therefore, its treatment would respond to the will to identify through this data the generator of the waste. However, it should be borne in mind that this link could also be carried out at the home address,

commercial establishment or equipment, as the case may be. Therefore, the treatment of the data relating to the cadastral reference would be excessive in the present case.

VII

As has been said, the City Council plans to communicate the waste "prepadrons" to the company awarded the selective waste collection service in the municipality.

In turn, it points to the need to formalize, at the beginning of the provision of the service, a contract between the City Council, the company (...) (contractor of the service) and also the company (...) (provider of the technology necessary for the provision of the service to the awarded company), in order to adapt data communications to data protection regulations.

It should be borne in mind that, as Law 9/2017, of November 8, on public sector contracts (hereafter, LCSP) is applicable, the same rule attributes to said companies the status of data controller, it appears that The RGPD defines as "the natural or legal person, public authority, service or 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 December 13, are met. In any case, the provisions of article 12.2 of said Law must be stated in writing.**
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> **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.**
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> **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."

Given this, it is certainly necessary to formalize a treatment order between the City Council (responsible) and the company (...), awarded the selective waste collection service (responsible for treatment), by means of 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, the obligations and rights of the person in charge, and the rest of the established aspects in article 28.3 of the RGPD.

Likewise, taking into account the participation of a third company (...) which will predictably have access to personal data, it is necessary that this contract establish the provision that, through its formalization, the City Council authorizes to the awarded company to subcontract certain services that said company considers essential to guarantee the correct provision of the selective waste collection service, such as information management services and ICT technologies.

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 awarded 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 should be established, the which this other subcontracted company should also comply with (article 28.4 RGPD).

Make it clear that, in the event of non-compliance by the subcontracted company, the initial contractor (the awarded company) would continue to be fully responsible for the fulfillment of the subcontractor's obligations vis-à-vis the data controller (the City Council).

Emphasize that, among other obligations, 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, of 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 information processed and the rights of the people affected. For its part, the 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 may take into account whether said company has 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 when 'establish that the treatment complies with the requirements of the RPGD and the protection of the rights of the affected person is guaranteed (Article

In any case, these security measures should conform to the National Security Scheme (ENS), 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 person in charge of the treatment in the RGPD available on the website of this Authority.

In addition to all this, it must also be taken into account that the information required by article 122.2 of the LCSP, in its wording given by article 5 of Royal Decree-Law 14/2019, must be included in the clauses , of October 31, by which urgent measures are adopted for reasons of

public security in matters of digital administration, public sector procurement and telecommunications:

> **"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.**
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> **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 ."**

At this point, it is appropriate to refer to the information that, according to the City Council, the winning company presented in its offer on the technology used for the selective collection service and that the company provides (...). It is noted that the data management platform (software) offered by said company is hosted in the Microsoft Azure cloud.

Azure comprises a set of cloud services (application processing, databases, applications for mobile devices, storage networks, etc.) from the Microsoft company that are offered in an integrated way to organizations and enterprises.

Therefore, it must be borne in mind that we would be dealing with a second level of sub-processor (the Microsoft company), with which a contract should also be formalized in which it is established that it remains subject to the same conditions, as regards to the processing of data, that the person in charge of the treatment.

It is also pointed out that the Azure servers, in which the data linked to the provision of the service will be stored, are located in the Netherlands.

If this is the case, it should be borne in mind that, as there is no communication of data to third countries located outside the European Economic Area, we would not be faced with an international transfer of data (TID) in the present case.

Likewise, it is understood that Microsoft Azure's own security and data protection standards are applied.

Given that, as has been said, the RGPD establishes a comprehensive security scheme, in which it is necessary to determine which measures to apply based on the characteristics of the treatment and a prior risk analysis, it is necessary to ensure that the measures adopted by Microsoft in relation to its Azure service, conform to that derived from the National Security Framework. In this sense, as has been said, it should take into account whether the implementation of these measures has been subject to certification and audit by an independent third party, given that this could be an indication of an adequate level of information

Regarding the contracting of the Microsoft Azure service and the implications that this may entail from the point of view of data protection, it may be of interest to consult the opinion CNS 60/2016 issued by this Authority.

VIII

At this point, 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 (Article 28.3.a) RGPD). In other words, the City Council can commission a data processor to process those data that the City Council itself would be able to carry out.

Also, that the specific personal information to which the person in charge of the treatment can access will in any case be determined by the functions and/or tasks that he/she is required to carry out as a result of the order carried out by the City Council and provided that, for its exercise, it is necessary to have this information (article 33.1 LOPDGDD and article 5.1.c) R

On this issue, as has been said, the City Council points out that it will make the waste "prepadrons" available to the company awarded the service. These contain the address of the home of the user or of the commercial establishment, the cadastral reference of the property (although as noted may be unnecessary), information on the rate and also on possible bonuses.

In principle, it is not appreciated that for the provision of the selective waste collection service by the company that is awarded it, it is essential or necessary to have all of this information available.

Taking into account the characteristics of the selective waste collection model, based on a system of identification of the containment elements and also on the use of closed contribution areas or mini areas with access control, it seems clear that the The winning company must be able to have the data that allows the identification of the user, for the purposes of recording the contributions made and, when appropriate, to authorize access to the closed

In the present case, this identification is carried out through an alphanumeric code, which is incorporated in the tags (labels) attached to the containment elements or in the card or key fob for opening the areas that is provided to the user Therefore, a priori it would only be necessary for the awarding company to have this unique code assigned to each user.

In the documentation sent, it is not sufficiently defined whether the assignment or linking of the alphanumeric code to the information of the users of the service will be carried out by the City Council itself, or whether this task is part of the treatment assignment made to the company awardee

The technical report only notes that this binding is done through the service application. In accordance with the Technical Specifications "the service app will allow you to manage registrations, cancellations and any other modifications. This functionality will initially allow - during the implementation of the new service - to create the domestic and commercial databases and associate the contribution materials with tags and the opening cards of the areas, with the aim of generating databases of 100% reliable data with all users and associated codes" (point 21, clause 4.1).

The fact that the aforementioned code is not part of the "prepadrons", that is to say, of the database that the City Council plans to make available to the awarded company for the provision of the service, could be an indication that the 'attribution of the alphanumeric code that must allow the univocal identification of the people using the service, as well as the linking of this code to the RFID tags and electronic key chains, would correspond to the awarded company

If this is the case, providing the awarding company with the address of the domicile or commercial establishment, information that allows to indirectly identify the people using the service, would be justified, given that otherwise the company would not be able to carry out the activity on behalf of of the City Council.

Conversely, in the event that this task is carried out by the City Council itself, it would be sufficient to provide the awarded company with the assigned alphanumeric codes.

Do agreeing that, both from the point of view of the principle of data minimization (article 5.1.c) RGPD) and the principle of privacy by design and by default (Article 25 RGPD), the latter option would be preferable.

As this Authority highlighted in opinion CNS 6/2020 and reiterated in opinion CNS 36/2020, the decision to use pseudonymized data in the context examined allows the City Council (responsible) to reduce the risks associated with its treatment for the affected persons, as well as guarantee a more secure data treatment and compliance with the rest of the requirements in the field of data protection.

In any case, with regard to the determination of the specific data that are appropriate to carry out the treatment by the awarding company (or other persons in charge), it would be necessary to have detailed information on each of the functions entrusted to it and which are part of the object of the order.

IX

In the documentation sent, it is agreed that the awarded company will also make available to the City Council an application for mobile phones (Citizen App) with the aim of establishing a two-way channel of communication between citizens and the service.

It is pointed out that through this application users will be able to consult their service participation data, generate service incidents, receive personalized and general notifications, consult the waste collection schedule and other information related to municipal waste.

It is also understood that this application is voluntary and requires the prior registration of the user, which must be done by providing the email, at which time the legal notice of data protection will be displayed.

In this case, the treatment of the personal information of the users of this application by the City Council would be based on their prior consent, the legal basis of article 6.1.a) of the RGPD, by which what we would be facing a lawful data processing.

Remember, however, the need for data processing through this application to be carried out respecting the principle of data minimization (Article 5.1.c) RGPD) and guaranteeing adequate security for the risk (Article 5.1.f) RGPD).

Regarding the notice on data protection, remember that the information provided to those affected about the processing of their data must meet the aspects established in article 13 of the RGPD, as well as that, for compliance of this obligation, the information can be offered by layers or levels, as provided in article 11 of the LOPDGDD.

Having said that, it would be advisable that in the information campaigns on the implementation of the new selective waste collection system that can be carried out, the people who use the service are also informed about the data processing that the implementation of the new model will involve of selective collection, as well as the different actors involved in the processing of the data.

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Finally, remember that this type of selective waste collection model, which allows identifying the people who use it 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 personal data to evaluate certain personal aspects of a natural person, in particular to analyze or predict aspects related to performance professional, economic situation, health, personal preferences, interests, reliability, behavior, location or movements of said natural person."

Specifically, from the analysis of the data generated by the computer system used to provide the service (the record of each emptying on the day and time indicated and for the indicated fraction and/or the record of each access to the areas closed by each user, indicating the date and time, in both cases, including the assigned alphanumeric code) together with the rest of the data contained in the waste register (which, in this case, allow the indirect identification of the person user through the address of the home) it could be possible to establish the routines and/or preferences of the people affected in the use of the service (which waste is recycled more or less easily, if the waste is always deposited in same time slot in the case of areas, etc.). In other words, evaluate certain aspects of their l

In the consultation, there is no reference to the intention to draw up any conduct or behavior profile based on the data that could be available as a result of the provision of the service on the natural persons who are its users.

However, it cannot be overlooked that the proper management of the fair rate of garbage, the ultimate objective to which the implementation of a selective waste collection system such as the one examined, can lead to the preparation of these behavioral profiles, which can end up having significant effects, and even legal effects if a fair fee system is applied or the data obtained is used to control the way waste is deposited.

As we have seen, in a PXP system the rate that users of the selective waste collection service must pay is determined based on their participation in the service. It is intended, with this system, 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 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 creation 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 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 TRLR).

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 should be remembered that in any case the creation of profiles that have legal effects or significant effects on the people affected should comply with the provisions of article 22 of the RGI

Consequently, in this case it would be necessary to articulate the application of possible bonuses on the garbage fee to the prior obtaining of the explicit consent of the users of the service who may be interested in obtaining these advantages (article 22.2.a) RGPD).

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

Conclusions

From the point of view of data protection, the choice of the selective collection model most suitable for the municipality requires an impact assessment related to data protection.

According to the information available, the processing of personal data resulting from the implementation of the selective waste collection system for the application of the fair rate system could be covered by the legal basis of article 6.1.e) of the RGPD when carried out in the exercise of municipal powers in the matter of waste collection and management. This, as long as the principle of data minimization is respected in the terms indicated in this opinion.

However, in the absence of specific legal provision, the creation of profiles that produce legal effects on the person using the service or that significantly affect them in a similar way, requires the explicit consent of the affected persons.

The processing of data of service users who register with the citizenship application could be protected by the legal basis of article 6.1.a) of the RGPD relating to the consent of the affected person.

The participation of third parties in the implementation of this system requires the formalization of a contract for the person in charge of the treatment and, where appropriate, for the sub-person in charge, in the terms of article 28 of the RGPD, as well as compliance with the obligations established in this regard i

Barcelona, February 1, 2022