

File identification

Resolution of sanctioning procedure no. PS 24/2023, referring to the City Council of La Garriga

Background

1. On 06/27/2022, the Catalan Data Protection Authority received a letter of complaint against La Garriga City Council, due to an alleged breach of the regulations on personal data protection. In summary, the person making the complaint presented the following circumstances, in relation to the "door to door" waste collection service provided by the City Council of La Garriga:

- That the City Council does not satisfy the duty to inform the users of the "door to door" waste collection service in accordance with the personal data protection regulations.
- That, on 04/29/2022, the City Council's processing activity register (RAT) was not updated, since it did not include the processing of personal data carried out as part of the provision of the collection service of waste door to door.
- That the reported entity has not carried out the data protection impact assessment (AIPD) prior to the processing of personal data carried out within the framework of this provision.

In relation to the above, various documentation related to the circumstances of the events reported was attached to the letter of complaint. Among other things, the email that the reporting person sent to the data protection representative of the reported entity on 04/14/2022, in which it was made clear that the RAT of the Garriga City Council does not contain information on the treatment related to "the provision of the door-to-door collection service and closed areas with access control and its subsequent control and monitoring." Likewise, it also provided the entity's response, dated 04/29/2022, through which the complainant is informed that "the processing of data collected for this purpose will appear registered in the next update of the Register of Treatment Activities (RAT) of La Garriga City Council, which is updated at the end of the year."

In the end, the letter of complaint was also accompanied by the ticket that the City Council made available to citizens, in order to collect the data of the people using the service and provide them with the necessary material. This notice did not contain information about the processing of the collected data.

This complaint was assigned no. IP 235/2022.

2. After submitting the aforementioned complaint, on 26/01/2023 the same person submitted a new complaint in relation to the same processing of personal data. The purpose of this new letter was to denounce that this treatment poses a high risk to the rights and freedoms of the users of the service, among other issues because it allows the creation of profiles. Likewise, the letter also stated that the Garriga City Council makes the " bitPAYT " mobile application available to citizens, which collects data from people who use the

service. And, in relation to this, he added that the website <https://www.bitpayt.com/bitPAYT/politica.html> informs that the data “ may be communicated to third-party organizations linked to MOBA. ” This complaint was assigned no. IP 48/2023.

3. The Authority opened a preliminary information phase, in accordance with what is foreseen in article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, of the common administrative procedure of public administrations (LPAC), to determine if the facts were likely to motivate the initiation of a sanctioning procedure.
4. In this information phase, on 01/07/2022 the reported entity was required to indicate how it exercised the right to information of the people who filled in the form to collect the material needed for the collection service of waste door to door, and documented. Likewise, the City Council was also required to provide a copy of the AIPD executed on the occasion of the implementation of this service.
5. On 07/15/2022, La Garriga City Council responded to the aforementioned request through a letter in which it stated the following:
 - That "initially the affected people were informed through the display and delivery, at the time of signing the ticket, of an informative text to each of the people from whom data was obtained. Attached is the document which, as will be seen, also informs about the possibility of consulting more information about data processing on the municipal website. As of today, information on data processing has been included in the door-to-door kit collection slip itself (attached). The information includes the minimum contents established in article 11.2 of the LOPDGDD and the option is given to consult additional and detailed information on the processing of data in the Data Protection Policy on the City Council's website. "
 - That "once the ticket was obtained, the interested person received by e-mail a voucher confirming the data provided and informing them again about the processing of the data. (...) As of today, the informative text of the email has been changed, instead of accessing the information on the processing of the data through a direct link, the processing of the data is informed in the same confirmation email."
 - That "it is found that none of the circumstances provided for in article 35 of the General Data Protection Regulation are met and two or more of the eleven criteria of the List of types of data processing that require impact assessment are not met relating to data protection published by the Catalan Data Protection Authority. Consequently, it is not appropriate to carry out an impact assessment relating to data protection for the implementation of the door-to-door waste collection system."

The reported entity attached various documentation to the letter. Among other things, the notice on data protection that the Garriga City Council showed to people who collected the necessary material for the provision of the door-to-door service, which is transcribed below:

"Responsible for the treatment: La Garriga City Council.

Purpose: The purpose of the treatment will be solely and exclusively the provision of the door-to-door collection service and the management of closed areas with access control.

Legitimation: The legal basis for carrying out data processing is the fulfillment of a public interest mission (art. 6.1.e RGPD) and compliance with a legal obligation (art. 6.1.c RGPD).

Recipients: the data is not communicated to third parties.

Rights: The interested party can exercise their rights of access before the Data Protection Delegate; rectification; deletion; limitation of treatment; data portability, opposition and not being subject to automated individual decisions, including profiling.

You can exercise these rights at the electronic Headquarters or at the Citizens' Service Office (Plaça de l'Església, 2, 08530 – Garriga. Tel 93 860 50 50).

You can obtain additional and detailed information on the processing of data in the data protection policy of the Garriga City Council."

The City Council of La Garriga also provided the new bulletin which, as it said, already includes the content of article 11.2 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD). Regarding the processing of personal data, this notice informs of the following:

"The Garriga City Council will treat your data as data controller to manage the door-to-door waste collection service and management of closed areas with access control. You can consult additional and detailed information on how to exercise rights (access, rectification, deletion, portability, opposition and/or request for limitation of treatment) and on the data protection policy at www.lagarriga.cat."

6. On 01/23/2023, also during this preliminary information phase, the Authority sent a new request for information to the Garriga City Council to report on whether, as part of the provision of the door-to-door waste collection service, the people using the service leave the waste on the public road, in front of their homes, and if the containment elements incorporate a label that is associated with a code that identifies the fraction collected and the housing Likewise, the City Council was also required to specify the meaning of the alphanumeric sequence of the code associated with each home, and about the monitoring of incidents that is carried out to inform residents and clarify the system of contributions.
7. On 02/06/2023, the Garriga City Council responded to the request for information indicated in the previous antecedent, in the following terms:
 - That "the people using the service leave the buckets on the public road, in front of their homes, and that the containment elements include a sticker attached with a QR code that is associated with the fraction collected and the home."
 - That "the meaning of the alphanumeric sequence of the Code that is associated with each house is as follows: LG ("La Garriga"), PAP ("Door to Door"), the numerical sequence is an internal reference that relates to the housing Each address has an associated code that allows you to work with this code and not directly with the address ."
 - That "regarding how the complainant's right to information was complied with [when she collected the access card to the emergency areas] I report that it was carried out

through informative text that was displayed in the point of care for users and was given to each person at the time of signing the ticket. Today, this information is not given separately from the ticket, but the information on the processing of the data was included in the same ticket of the door-to-door kit. Likewise, when the complainant filled in her data in the "High emergency area form" you were also informed about the processing of your data by means of the footer that appears on the same form.

- That "following the complaint made by the complainant, information on data protection was included in the door-to-door kit ticket itself. The information included the minimum content established in article 11.2 of the LOPDGDD and the option was given to consult additional and detailed information on the processing of data in the Data Protection Policy on the City Council's website (...)."
- That incidents are divided into two blocks: "incidents that can be directly and specifically related to a bucket, and those that are not related to a specific bucket. To date, no disciplinary proceedings have been instituted. The incidents have made it possible to inform users of the guidelines to follow. (...)."

Attached to the letter was the document through which the right to information was offered and the new version of the ticket, which contains the information transcribed in the 5th precedent.

8. On 03/03/2023, the Authority addressed a new request for information to La Garriga City Council, in which, among other issues, the following was requested:
 - The specific date on which the provision of the door-to-door selective waste collection service began.
 - Confirmation of whether, based on the reading of the chips installed in the bins, the fee is applied for the provision of the municipal waste management service;
 - Copy of the contract formalized with the company MOBA ISE Mobile Automation SL (Moba), which makes available to users of the service the mobile application " bitPAYT ", through which users can track their contributions monthly
9. On 03/03/2023, also in the context of this preliminary information phase, the Authority's Inspection Area carried out several checks via the Internet on the facts subject to the complaint. Thus, it was found that through the website (<https://residuzero.lagarriga.cat>), owned by the reported entity, a section on Frequently Asked Questions is accessed which contains a series of questions and answers about door-to-door service. In relation to this information, the following are the aspects related to the provision of this service:
 - That "the contribution of the waste that is left in front of each portal is individualized and taxation systems can be implemented, also individualized."
 - That "prevents us from having to travel to contribute our waste, since we leave it at the portal itself."
 - That, unlike the door-to-door system, "with the system of containers open on the public road the rest can be thrown away every day for 24 hours, so there is no incentive to do

it right. It is a system based on anonymity and volunteering, which has a very expensive barrier."

- That "organic waste must be removed in the brown bin with a 20 liter chip and always with the compostable bag. Inside the bucket we can put as many organic bags as they fit. Light packaging must be removed in the approved yellow bag, well crushed so that it takes up less space. Paper and cardboard must be removed in a paper bag or cardboard box. It must not be removed in any bucket and never in a plastic bag. The rest, that is, the waste that cannot be recycled, must be removed in a plastic bag in the gray bin with a 20 liter chip."
 - That, in relation to diapers and pads, "we call this fraction 'sanitary textile' and it is considered leftover, so it can be taken out on Mondays in the gray bin. If diapers or some other similar waste is generated continuously, you can request the specific sanitary textile collection service. (...) At the same time, stickers are delivered that must be put on the bags so that they are clearly identified."
 - That "waste that is not removed properly will not be collected, will be left on the public road and will be marked with an incident sticker in order to communicate it and encourage the neighbor to correct the error."
 - That "the bags are semi-transparent to facilitate visual inspection for operators."
 - That "if one day, on a timely basis, you have to leave shortly before the time to remove the waste, you can leave it in front of the portal when you leave."
 - That "the waste and organic bins carry a chip that is read each time the bin is collected. They act as counters. The chips contain a code that is associated with the home and do not store personal data. The analysis of these records allows us to monitor participation and, in the long run, implement a system of rates adjusted to each household based on what it recycles."
- 10.** On 03/17/2023, the Garriga City Council responded to the request for information indicated in the 8th precedent, in the following terms:
- That "The service started on April 29, 2022. The readings of the buckets began later, between November and December 2022, in order to start the official reading in January 2023. The reading of the buckets is applied after the start of the service since a pilot test of the service was carried out between May and November 2022."
 - That "We confirm that the reading of the chips in the bins provides information that can later lead to discounts in the garbage collection rate."
 - That "The collection bins incorporate a QR code and a numbered label on the right side of the bin without exterior numbering. Each QR code and label is permanent and unique to each bucket. The QR code is formed as follows: LG (La Garriga) + 020 + R/O (Rest or organic) and a six-digit code. The label code contains 2 letters and 2 numbers, common to all labels, and a specific code for each bucket made up of 21 numbers."

- That "The bags provided by the City Council do not contain any chips. The bags of packaging that are on the street are not linked to any housing. The bags of organics that appear inside the bin are attributed to the housing to which the bin corresponds."
- That "People using the service can deposit the bins outside their homes, with the respective waste bags inside, from 8pm to 9pm. The collection truck starts its journey at 9pm."
- That "The initial form that [the person making the complaint here at the time of collecting the material necessary for the provision of the service] filled out did not include the information clause on the processing of personal data, but it did provide the information at the time of hand over the ticket, through an informative text that was displayed at the information point, where the ticket was handed out to users. Subsequently, the kit collection slip was modified to include on the same sheet the information on the processing of personal data, a model that was made available to this Authority in the first response to the request IP 235/2022 ."

The City Council of La Garriga also provided the subcontractor contract signed between the company Prezero and Moba . This contract includes the following circumstances:

"I. That, as a consequence of the provision of the Services between AJUNTAMENT de la GARRIGA (hereinafter, "the Person responsible for the treatment") and the Data Controller consisting of Describing the Contract/service that PREZERO has with AJUNTAMENT de la GARRIGA, the Data Controller treatment can access personal data that are under its own responsibility, custody and protection; teniendo a estos efectos I RECOGNIZE the legal status of Data Controller with respect to the same.
II. That, for the provision of said services, the Data Controller has authorized the Data Controller to subcontract the Software Services provided by the Sub- Data Controller.
III. That, consequently (...) the Parties wish to include in this agreement the conditions of data processing by MOBA ISE MOBILE AUTOMATION SL."

For what is of interest here, the aforementioned contract includes the following clause (the bold is from the APDCAT):

"THIRD.- That the access by MOBA to the information of personal data communicated through the files the responsibility of the CLIENT will be for the purpose of providing the own services of MOBA which, as Sub-in charge of processing them, **is agrees not to divulge or communicate to third parties the information obtained as a result of this contractual relationship with the CLIENT with the exception of those data that must be communicated by legal requirement, according to the applicable laws and in force at the time of activation of the service. "**

11. On 03/23/2023, still within the framework of the preliminary information phase, the Authority's Inspection Area downloaded the " bitPAYt " mobile application that the Garriga City Council puts available to users of the door-to-door waste collection service. The information notice regarding data protection, which must be accepted in order to use the services of this application, contains the following information:

"The data may only be communicated to third-party organizations linked to MOBA in the field of managing its products and/or services for the same purposes referred to above, as well as to the competent Public Administrations, when required by current regulations."

12. On 11/04/2023, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Garriga City Council for three alleged infringements: one infringement provided for in article 83.4. *a* in relation to article 35; another violation provided for in article 83.5. *b* in relation to article 13; and a third offense also provided for in article 83.4. *a*, in relation to article 30; all of them from Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, regarding the protection of natural persons with regard to the processing of personal data and the free movement of such data (RGPD) . This initiation agreement was notified to the imputed entity on 04/11/2023.
13. The initiation agreement explained the reasons why no allegation was made regarding the fact that the reported entity made the bitPAYT mobile application available to users of the door-to-door service . Through this application, the Moba company collects personal data from users of the service and, in the words of the complainant, "shares it with third-party organizations linked to Moba ."

Regarding this, as part of the investigations, the Authority found that in relation to the door-to-door service, the City Council signed a data processor contract with the company Prezero and that, in accordance with the article 28 of the RGPD, authorized this company to subcontract software services with the company Moba ; therefore, the latter acted as sub-responsible for the processing of the personal data of the users of the service. It was also established that this contract included Moba 's obligation not to disseminate or communicate to third parties the personal data it obtains from users of the door-to-door service. Therefore, given that the Authority did not have any elements that would allow it to be established that the Moba company communicated data to third parties and contravened the data protection regulations, these reported facts were archived.

14. In the initiation agreement, the accused entity was granted a period of 10 working days to formulate allegations and propose the practice of the tests it considered appropriate to defend its interests.
15. On 04/25/2023, the Garriga City Council submitted a letter in which it reported the following, in relation to the alleged failure to update the RAT, for not including the processing of personal data for the concierge service at the door:

"this treatment was approved by Mayor's Decree of June 10, 2022. Due to its importance, the Decree and the description of the treatment were published on the municipal web portal, where it still appears today (...). In a future version of the Register of treatment activities carried out by the City Council, pending approval only, this treatment will be incorporated (...)."

16. On 02/06/2023, the person instructing this procedure formulated a resolution proposal, for which he proposed that the director of the Catalan Data Protection Authority admonish the Ajuntament de la Garriga as responsible , in the first place, of an

infringement provided for in article 83.4. a in relation to article 35; secondly, of an infringement provided for in article 83.5. b in relation to article 13; and, thirdly, of an infringement provided for in article 83.4. a in relation to article 30; all of them from the RGPD.

This resolution proposal was notified on 02/06/2023 and a period of 10 days was granted to formulate allegations.

17. The deadline has been exceeded and no objections have been submitted.

proven facts

1. The Garriga City Council has not carried out an impact assessment on data protection, in relation to the processing of personal data that it carries out as part of the provision of the door-to-door waste collection service. This, despite the fact that this treatment involves a high risk for the rights and freedoms of the people using the service.
2. Before collecting the data of the users of the door-to-door service, the Garriga City Council does not inform about all the points required by article 13 of the RGPD, in connection with article 11.2 of the LOPDGDD. In particular, neither the document that was shown to the users when they collected the door-to-door kit, nor the ticket with their data, was informed about the processing of data for the creation of profiles.

The new bulletin that the City Council provided to the Authority on 06/02/2023 (previous 7th) also does not contain the information related to the creation of profiles.

3. On 04/29/2022, the RAT of the Garriga City Council did not include information on the processing of personal data carried out as part of the provision of the door-to-door waste collection service.

Fundamentals of law

1. LPAC and article 15 of Decree 278/1993 apply to this procedure, according to the provisions of DT 2a of Law 32/2010, of October 1, of the Authority Catalan Data Protection Authority. In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.
2. The accused entity has not made allegations in the resolution proposal, but it did so in the initiation agreement, solely in relation to the 3rd imputed fact, relating to the failure to update the RAT. Regarding this, it is considered appropriate to reiterate below the most relevant part of the motivated response of the instructing person to these allegations.

The City Council stated that, on 10/06/2022, it published a mayoral decree on its website that collected and described the processing of personal data carried out as part of the door-to-door service, and alleged that "in a future version of the Register of treatment

activities carried out by the City Council, pending approval only, this treatment will be incorporated."

As indicated by the person instructing this procedure, the Authority positively assesses that the reported entity published on the municipal website the modification of the RAT, to include the aforementioned processing of personal data. However, this action does not detract from the qualification of the third proven fact. And this because, as the reported entity has acknowledged, on 04/29/2022 the RAT was not updated and did not include the processing of personal data carried out for the door-to-door service, despite the fact that the City Council already collected personal data from users of this service.

In accordance with the above, this allegation cannot be successful in order to absolve the City of responsibility for not having the activity register of the treatment updated.

3. In relation to the fact described in the first point of the proven facts section, relating to the lack of an AIPD, it is necessary to refer to article 35 of the RGPD, which provides for the following:

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

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

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

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

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

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

4. The control authority will establish and publish a list of the types of processing operations that require an impact assessment related to data protection in accordance with section 1. The control authority will communicate those lists to the Committee in question article 68.

5. The control authority may also establish and publish the list of types of treatment that do not require impact assessments related to data protection. The control authority will communicate those lists to the Committee.

6. Before adopting the lists referred to in sections 4 and 5, the competent control authority will apply the consistency mechanism contemplated in article 63 if those lists include processing activities that are related to the offer of goods or services to interested parties or with the observation of their behavior in various Member States, or processing activities that may substantially affect the free circulation of personal data in the Union.

7. The evaluation must include at least:

- a) a systematic description of the planned processing operations and the purposes of the processing, including, when applicable, the legitimate interest pursued by the controller;
 - b) an evaluation of the necessity and proportionality of the treatment operations with respect to their purpose;
 - c) an evaluation of the risks for the rights and freedoms of the interested parties referred to in section 1, y
 - d) the measures foreseen to face the risks, including guarantees, security measures and mechanisms that guarantee the protection of personal data, and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of the interested parties and other persons affected
8. Compliance with the approved codes of conduct referred to in article 40 by the corresponding managers or managers will be duly taken into account when evaluating the repercussions of the treatment operations carried out by said managers or managers, in particular for the purposes of impact assessment related to data protection.
9. When appropriate, the person in charge will obtain the opinion of the interested parties or their representatives in relation to the intended treatment, without prejudice to the protection of public or commercial interests or the security of the treatment operations.
10. When the treatment in accordance with article 6, section 1, letters c) oe), has its legal basis in the Law of the Union or in the Law of the Member State that applies to the person responsible for the treatment, such Law regulates the specific treatment operation or set of operations in question, and an impact assessment relating to data protection has already been carried out as part of a general impact assessment in the context of the adoption of said legal basis, sections 1 to 7 they will not apply except if the Member States consider it necessary to carry out said evaluation prior to treatment activities.
11. If necessary, the person in charge will examine whether the treatment complies with the data protection impact assessment, at least when there is a change in the risk represented by the treatment operations.”

Sections a and c of article 35.3 of the RGPD are clear, when they provide that an AIPD must be carried out when the processing of personal data involves the systematic and comprehensive evaluation of personal aspects of natural persons based on automated processing, such as the elaboration of profiles, and on which decisions are adopted that produce legal effects for people or that significantly affect them in a similar way; and, also, when the treatment involves the systematic observation on a large scale of a public access area, as is the case here.

In this respect, neither the RGPD nor the LOPDGDD define the concept of "large-scale processing" nor do they state which treatments involve a "large-scale" use of data. However, Recital 91 of the RGPD gives some guidance (“ large-scale processing operations that seek to process a considerable amount of personal data at a regional, national or supranational level and that could affect a large number of interested parties and involve probably a high risk, for example, due to its sensitivity, when, depending on the level of technical knowledge reached, a new technology has been used on a large scale”). Regarding this, the Article 29 Working Group produced the document Guidelines on Data Protection Delegates (DPD) 16/ES WP 243 rev.01, which when determining

whether a treatment is due to large-scale term recommends taking into account the following factors:

"- The number of interested parties affected, either as a specific figure or as a proportion of the corresponding population; - The volume of data or the variety of data elements that are the object of treatment; - The duration, or permanence of the data processing activity; - The geographical scope of the treatment activity;

By way of example, the Article 29 Group states that "the processing of travel data of persons who use the public transport system of a city (e.g. tracking through transport cards)" is a large-scale treatment.

As the instructor of the procedure pointed out, there is no doubt that the treatment reported here has many similarities with the treatment that has been exemplified; both in terms of the number of people – individuals from a certain population – and the monitoring that is carried out through the code that incorporates the containment elements. This circumstance, and the fact that the waste is collected in front of the homes of the people using the service, which are areas of public access, make it impossible to rule out that the case provided for in article 35.3 *c* of the RGPD, which requires an AIPD.

On the other hand, the systematic and comprehensive evaluation of the users of the service carried out by the City Council, based on the chip installed in the containment elements, corroborates that profiles are drawn up given that, as states in the 9th and 10th antecedents, this collection allows "to implement a system of rates adjusted to each household based on what it recycles" and, therefore, entails legal effects for users of the service.

For its part, article 28.2 of the LOPDGDD lists some cases in which the existence of a high risk for the rights and freedoms of people is considered probable, which those responsible and those in charge of the treatment must take into account to assess whether an impact assessment should be carried out. Among these assumptions, and for the purposes that are of interest here, it is necessary to highlight the following:

- When the treatment may generate situations of discrimination, identity theft or fraud, financial losses, damage to reputation, loss of confidentiality of data subject to professional secrecy, unauthorized revision of pseudonymization or any other economic, moral or significant social for those affected (article 28.2. *to* LOPDGDD).
- When the treatment involves an evaluation of personal aspects of those affected in order to create or use personal profiles of them, in particular through the analysis or prediction of aspects related to their performance at work, their economic situation, their health, their personal preferences or interests, their reliability or behavior, their financial solvency, their location or their movements (article 28.2. *d* LOPDGDD).
- When there is a massive treatment that involves a large number of affected or involves the collection of a large amount of personal data (article 28.2.f *LOPDGDD*).

In accordance with the provisions of article 35.4 of the RGPD, previously transcribed, on 06/05/2019 the Authority published the list of types of data processing that require an impact assessment related to the protection of data, before starting treatment. As

indicated in this document, where the treatment meets two or more criteria included in this list, an AIPD may be required. And, the more criteria the treatment meets, the greater the associated risks and the more certain it is that AIPD needs to be done. In this case, the following criteria should be highlighted:

- Treatments that involve profiling or assessment of subjects, including the collection of the subject's personal data in multiple areas of their life (performance at work, personality and behaviour), which cover various aspects of their personality or their habits (criterion number 1).
- Treatments that involve the use of data on a large scale (criterion number 7).
- Treatments that involve the use of new technologies or an innovative use of established technologies, including the use of technologies on a new scale, with a new objective or combined with others, so that it involves new forms of data collection and use, with risk to people's rights and freedoms (criterion number 10).

In relation to the above, in the context of the previous information that preceded this procedure, the accused entity admitted that it had not carried out an AIPD to know the impact that the door-to-door waste collection service could involve to data protection. In the case at hand, the high risk posed by the controversial treatment for the rights and freedoms of the people affected cannot be ignored, which demonstrates the need for an AIPD.

It should be noted that, despite the fact that selective door-to-door waste collection associates the bin with a specific house, and not with a person, the collection of containment elements takes place on the public road, in front of the door of each house; in certain cases, this makes it possible to associate the buckets, and therefore the waste, with specific people without disproportionate efforts. Therefore, there is a risk of identification of the person generating the waste with the containment element, a risk that is accentuated when the collection is carried out in single-family homes, or when only one person lives in the home .

In relation to the above, the bins provided by the City Council to users of the service, and which are compulsory to use, incorporate a QR code and a numerical sequence which, according to the City Council's statements, are unique to each address This fact increases the risk of identification of the person using the service, given that the numerical code associated with the bucket and a specific address is always the same.

In accordance with what has been explained so far, it is appropriate to bring to the table the opinion CNS 60/2021 of this Authority which established the following in relation to door-to-door waste collection:

"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 increases the risk of re-identification of the waste generator by any person residing 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, this type of collection model makes 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. (...)"

Linked to the above, it should be noted that the reported entity also requires the use of semi-transparent bags to "facilitate visual inspection for operators". This circumstance constitutes another risk for people using the service, since it allows third parties to visually glimpse the contents of the bags, while they remain on the public road. Likewise, with respect to the fraction of sanitary textiles, it should be noted that the fact that diapers and pads need to be deposited in a bag identified with a sticker can offer third parties information about a person's most intimate sphere, as is the fact that he uses diapers or pads. Regarding this, it should be noted that, when the waste remains, in the street anyone can exchange the bags deposited by the person using the service for those of another person. Circumstance that allows erroneous information to be linked to a specific address, and ultimately to a specific person.

Finally, it is necessary to demonstrate that, as pointed out in the proposed resolution, the waste collection system on public roads makes it possible to know, and even evaluate, over an extended period of time, people's behavior users of this service. And this because, on the one hand, the data linked to the reading of the labels incorporated in the containment elements - specified in the 7th and 10th antecedents - are recorded, and because, on the other hand, it could even be known the periods in which a person is absent from their home, by not depositing their waste on the public road.

in point 1 of the proven facts section, which constitutes the offense provided for in article 83.4, has been duly proven . to the RGPD, which typifies the violation of "the obligations of the person in charge and of the person in charge pursuant to articles 8, 11, 25 to 39, 42 and 42", among which is included in article 35 of the RGPD, relating to the data protection impact assessment.

The conduct that is analyzed here has been collected as a serious infraction in article 73.t of the LOPDGDD, as follows:

"t) The processing of personal data without having carried out the assessment of the impact of the processing operations on the protection of personal data in the cases in which it is required."

4. With regard to the fact described in point 2 of the proven facts section, regarding the right to information, it is necessary to refer to article 13 of the RGPD, which in its sections 1 and 2 establishes the information that 'must provide when personal data is obtained from the person concerned:

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

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

2. In addition to the information mentioned in section 1, the data controller will provide the interested party, at the time the personal data is obtained, the following information necessary to guarantee fair and transparent data processing:

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

In turn, the first section of article 11 of the LOPDGDD, regarding transparency and information to the affected person, establishes that (the bold is from the APDCAT):

"1. When the personal data is obtained from the affected person, the controller can comply with the duty of information established by Article 13 of Regulation (EU) 2016/679 by providing the affected person with the basic information referred to in section below and indicating an electronic address or other means that allows you to access the rest of the information in a simple and immediate way.

2. The basic information referred to in the previous section must contain, at least:

- a) The identity of the data controller and his representative, if applicable.**
- b) The purpose of the treatment.**
- c) The possibility of exercising the rights established by articles 15 to 22 of Regulation (EU) 2016/679.**

If the data obtained from the affected person must be processed for profiling, the basic information must also include this circumstance. In this case, the affected person must be informed of his right to object to the adoption of automated individual decisions that produce significant legal effects on him or significantly affect him in a similar way, when this right is given "in accordance with the provisions of article 22 of Regulation (EU) 2016/679."

In this case, while it is true that both the information leaflet and the document that was shown to people when they collected the door-to-door kit contained information provided for in article 11 of the LOPDGDD, neither document reported on all the aspects established by this precept, specifically on the creation of profiles. It should be added to the above that, although both documents referred to a web link that contained information on data processing, there was no information on the indicated point either.

In relation to the above, this Authority cannot overlook the fact that the personal data collected by the City Council as part of the door-to-door service allow profiles to be drawn up and decisions with legal effects on the users of the service, since it is assumed that their behavior may have fiscal effects (9th and 10th antecedents). In this sense, based on the controversial data processing, it is also possible to monitor incidents related to each user and adopt decisions on the basis of these incidents.

In accordance with what has been stated, the fact collected in point 2 of the section on proven facts constitutes the infringement provided for in article 83.5. *b* of the RGPD, which typifies the violation of "the rights of the interested parties pursuant to articles 12 to 22" , among which is the right to information in article 13 of the RGPD .

In turn, this conduct has been included as a minor infraction in article 74. *a* of the LOPDGDD, as follows:

"a) Breach of the principle of transparency of information or the right to information of the affected person for not providing all the information required by articles 13 and 14 of Regulation (EU) 2016/679."

- 5. With regard to point 3 of the proven facts section, it is necessary to refer to article 30 of the RGPD, which under the heading Registro de las actividades de tratamiento includes the obligation of each manager to have a record of the processing activities carried out under your responsibility which, among other information, must include:**

- "a) the number and contact details of the person in charge and, where appropriate, of the co-person in charge, the representative of the person in charge, and the data protection officer;**
- b) the purposes of the treatment;**
- c) a description of the categories of interested parties and the categories of personal data;**

- d) the categories of recipients to whom personal data will or will be communicated, including recipients in third countries or international organizations;
- e) where appropriate, the transfers of personal data to a third country or an international organization and, in the case of the transfers indicated in article 49, section 1, second paragraph, the documentation of adequate guarantees;
- f) when possible, the deadlines for the deletion of the different categories of data;
- g) when possible, a general description of the technical and organizational security measures referred to in article 32, section 1."

During this procedure, the fact described in point 3 of the proven facts section has been duly proven, that is, the RAT of the City Council did not report on the processing of personal data carried out in the framework of the provision of the service door-to-door waste collection. This is considered constitutive of the offense provided for in article 83.4. a of the RGPD, which typifies as such the violation of the obligations of the person responsible for the treatment, among which there is that described in article 30 of the RGPD, relating to the registration of the treatment activities.

The conduct that is analyzed here is included in article 74 section 1 of the LOPDGDD, which typifies it as a minor infraction:

"j) Have a record of processing activities that does not include all the information required by article 30 of Regulation (EU) 2016/679."

6. Article 77.2 of the LOPDGDD provides that, in the case of infractions committed by those responsible or in charge listed in article 77.1 of the same law, the competent data protection authority:

"(...) must issue a resolution that sanctions them with a warning. The resolution must also establish the measures to be adopted so that the conduct ceases or the effects of the offense committed are corrected. The resolution must be notified to the person in charge or in charge of the treatment, to the body to which it depends hierarchically, if applicable, and to those affected who have the status of interested party, if applicable."

In similar terms to the LOPDGDD, article 21.2 of Law 32/2010 determines the following:

"2. In the case of violations committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the violation and establishing the measures to be taken to correct its effects . (...)".

By virtue of this power, it is necessary to require the City Council of La Garriga to adopt the measures as soon as possible, and in any case within a maximum period of 2 months from the day after the notification of this resolution next:

6.1 Carry out an AIPD in relation to the processing of personal data carried out within the framework of the provision of the door-to-door service. Regarding this, in case it may be of interest, the Authority published the Practical Guide on impact assessment related to data protection, which can be consulted at the link <https://apdcat.gencat>

.cat/ca/inic and which contains guidelines for those responsible for the processing of personal data.

6.2 Facilitate all the points collected in article 13 of the RGPD and 11 of the LOPDGDD to the users of the door-to-door service, and specifically inform them about the creation of profiles.

6.3 Publish the updated processing activity register, which includes the processing of personal data carried out as part of the provision of the door-to-door service.

Once the corrective measures described have been adopted, within the specified period, the Garriga City Council must inform the Authority within the following 10 days, without prejudice to the inspection powers of this Authority to make the corresponding checks.

resolution

For all this, I resolve:

1. Admonish the Garriga City Council as responsible for three infractions: an infraction provided for in article 83.4. *a* in relation to article 35; another offense provided for in article 83. 5. *b* in relation to article 13; and a third offense provided for in article 83.4. *a* in relation to article 30, all of them of the RGPD.
2. Require the City Council of la Garriga to adopt the corrective measures indicated in the foundation of law 6th sections 1st, 2nd and 3rd, relating to the realization of an AIPD, the updating of the RAT and the satisfaction of the duty of information of the persons users of the door-to-door service, and certify to this Authority the actions it has taken to comply with them.
3. Notify this resolution to the Garriga City Council.
4. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.
5. Order that this resolution be published on the Authority's website (apdcat.gencat.cat) , in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010 and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency of Data Protection, the accused entity can file an appeal before the director of the Catalan Data Protection Authority, within one month from the day after its notification , in accordance with the provisions of article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with Law 29/1998, of July 13 , regulator of administrative contentious jurisdiction.

If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended under the terms provided for in article 90.3 of the LPAC.

Likewise, the imputed entity can file any other appeal it deems appropriate to defend its interests.

The director

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