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At the time of formulating the query, the new regime established by Regulation (EU) 2016/679, of the European Parliament and of the Council, of April 27, 2016, regarding the protection of people physical with regard to the processing of personal data and the free circulation of these data repealing Directive 95/46/EC (General Data Protection Regulation, RGPD) and in the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights.

Indeed, as indicated in the Explanatory Memorandum of Law 3/2018 "the The greatest novelty presented by Regulation (EU) 2016/679 is the evolution of a model based, fundamentally, on the control of compliance with another which rests on the principle of active responsibility, which requires prior assessment by the person in charge or by the person in charge of the treatment of the risk that could generate the processing of personal data for, from of said assessment, adopt the appropriate measures".

Therefore, it is the data controller who must comply with the principles that are included in article 5 of the RGPD, among which are finds, as seen, that of proactive responsibility, collected in its section 2, "the data controller shall be responsible for compliance of the provisions of section 1 and able to demonstrate it ("responsibility proactive)". And among the principles of section 1 is that of "legality", collected in its letter a), so that the personal data will be treated in lawful manner, regulating article 6 the legal bases that determine the legality of the treatment. Therefore, it is the data controller who

It is necessary to determine the legal basis that can protect the treatment correspondent.

Finally, a fundamental role within this new model of active responsibility established in the General Regulation of Protection of Data will be performed by the data protection delegate, which the Regulation General regulates in its articles 37 to 39. In particular, article 37.1 a) compulsorily imposes the designation of a delegate in the cases in which that "the treatment is carried out by a public authority or body, except courts acting in the exercise of their judicial function.

In turn, article 38.1 clearly establishes that "The person in charge and the in charge of the treatment will guarantee that the delegate of data protection

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participate appropriately and in a timely manner in all matters relating to the protection of personal data" and article 39.2 provides that "The data protection delegate will perform his duties by providing the due attention to the risks associated with treatment operations, taking into account the nature, scope, context and purposes of the treatment".

Finally, article 39.1 enumerates the functions of the delegate of data protection, among which are "informing and advising the responsible or in charge of the treatment and the employees who deal with of the treatment of the obligations incumbent upon them by virtue of this

Regulation and other data protection provisions of the Union or of Member States" (section a), "supervise compliance with the provided in this Regulation, of other provisions for the protection of data of the Union or of the Member States and the policies of the person in charge or of the person in charge of processing in matters of personal data protection, including the assignment of responsibilities, awareness and training of the personnel involved in processing operations, and audits corresponding" (section b) and "offer the advice requested about the impact assessment related to data protection and supervise its application in accordance with article 35 (paragraph c).

Likewise, it is up to the data protection delegate to "act as a point of contact for the supervisory authority for matters relating to the treatment, including the prior consultation referred to in article 36, and carry out queries, where appropriate, on any other matter" (section e).

Therefore, if the data controller has doubts about the legal basis that can determine the legality of a certain treatment

You should consult your data protection delegate in the cases in which that, like the present one, its designation is mandatory, who must provide the accurate advice.

Only in the event that the data protection delegate had doubts legal decisions on the matter submitted for its consideration that cannot resolved with the criteria already informed by the AEPD or because it is a new issues arising from the application of the new legal regime of protection of personal data and that have a general scope in the that a report that contributes to legal certainty is convenient, said delegate may submit a query to this Legal Office, accompanying

to said consultation its own report in which it is analyzed in detail and reasoned the questions object of consultation.

In the present case, the query is made by the DPO but is limited to a description of the facts that, in relation to the system of facial recognition by comparing the photo of the DNI or other identification document, and the image taken by the user through

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selfie video or photo of the user, it should be detailed in a more detailed way precise, accompanying the risk analysis and, where appropriate, the evaluation of impact on data protection.

Regarding the possible legal bases of the treatment, the query is

It is limited only to raising the issue, so it must be completed with the corresponding reasoned report in which the DPD collects its own conclusions and, especially, regarding the legitimate interest, make the corresponding weighting.

Madrid, March 04, 2021

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