

[Non-official translation]

## DELIBERAÇÃO/2024/137

### I. Report

1. The National Data Protection Commission (CNPD) has become aware that large-scale biometric data processing is being carried out, consisting, inter alia, in the operation of capturing images of the iris, eyes and face of individuals and their further processing for different purposes, including the creation of a digital proof of personhood, known as World ID. The provision of these biometric data by citizens is a prerequisite for citizens to receive a certain value in a cryptocurrency, called Worldcoin (WLD).
2. Consequently, in the performance of the tasks provided for in Article 57(1) (a), (h) and (i) and Article 58(1) (b) of Regulation (EU) 2016/679 of 27 April 2016 – the General Data Protection Regulation (GDPR) – read in conjunction with Article 3, Article 4(2) and Article 6(1) (b) of Law No 58/2019 of 8 August 2019, implementing the GDPR (Law implementing the GDPR), the CNPD opened the relevant inquiry procedure, which has been ongoing since 10 August 2023, in order to assess the compliance of those processing of personal data with the GDPR.
3. The following facts relate to conduct attributable to Worldcoin Foundation.
4. This decision covers the facts brought to the attention of the CNPD, from mid-February and early March 2024, namely the complaints received by the CNPD, relating to: (i) the collection of biometric data of minors (capturing images of iris, eyes and face), (ii) the impossibility of exercising the right to erasure, (iii) the impossibility of exercising the right to withdraw consent, and (iv) the poor information provided to data subjects.
5. It is also very significant for this decision the announcement to the public of the high growth in the collection of such biometric data, which already covered more than 300.000 (three hundred thousand) persons on national territory,<sup>1</sup> as well as the evident trend to increase such collection that led the company to use advance booking for the collection of biometric data, in view of the huge queues of persons, including minors, awaiting the collection of their data in order to obtain cryptocurrency, as has been duly reported this month<sup>2</sup>.

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<sup>1</sup> See the news of the newspaper 'Expresso' in its edition of 1 March 2024, citing the source of the Worldcoin project.

<sup>2</sup> In the various reports made by the press and television channels, there are a number of testimonies to this effect.

6. Next, the facts justifying the adoption of an urgent corrective measure by the CNPD, as the national data protection supervisory authority, under the corrective powers provided for in Article 58(2) of the GDPR, of a provisional nature, will be set out below until the ongoing investigation is completed and the final decision is issued.

## II. Analysis

### i. Facts

7. The Worldcoin Foundation “is a foundation, exempt from limited liability, a non-profit organization incorporated in the Cayman Islands” with its registered office at Suite 3119<sup>3</sup>, 9 Forum Lane, Camana Bay, PO Box 144, George Town, Grand Cayman KY1-9006, and without an establishment in the European Union<sup>4</sup>.

8. Since 24 July 2023, the launch date of Worldcoin, Worldcoin Foundation “took over the role of controller of the Worldcoin Project and related data processing activities (...) and now independently determines the purposes and means of the processing activities carried out in relation to World ID”<sup>5</sup>.

9. Tools for Humanity Corporation (‘TFH’), established in San Francisco, United States, and with a subsidiary established in Germany, known as Tools for Humanity GmbH, located in Allee am Röthelheimpark 41, 91052 Erlangen, in the State of Bavaria, currently carries out the relevant data processing activities of World ID only on behalf of Worldcoin Foundation and as its processor and under its direction<sup>6</sup>. TFH has no discretion to determine the means and purposes of the processing within the World ID and processes World ID data according to the Worldcoin Foundation’s detailed instructions<sup>7</sup>.

10. TFH, whose co-founders initially contributed to the development of the Worldcoin Protocol, is now only a data controller of the World App, a mobile application that has to be downloaded prior to the collection of biometric data<sup>8</sup>.

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<sup>3</sup> See the reply to the CNPD, dated 6/9/2023, annexed the file, following a series of questions sent by the CNPD on 23/8/2023 to Worldcoin Foundation and Tools for Humanity Corporation (hereinafter ‘the Response to CNPD’) and set out in the statement in the explanation to Question 5, set out in the Annex to the Response, with regard to the questions addressed to the Worldcoin Foundation.

<sup>4</sup> See the information on the company’s website and in the documents ‘worldcoin-privacy-notice-3-2-pt.pdf’ and <https://vault.pactsafe.io/s/8a18d792-fd76-44db-9b92-b0bb7981c248/legal.html#contract-s1ytru6kk>, annexed to the case file).

<sup>5</sup> See the Response to CNPD set out in points 2 and 3 of Part III and the clarification of question 2 in the Annex to the reply.

<sup>6</sup> See the Response to CNPD set out in point 3 of Part III and the clarification of question 2 in the Annex to the reply, as well as in Annexes II and III to the Response to CNPD.

<sup>7</sup> See Response to CNPD’, set out in the clarification of question 5 in the Annex to the Response to CNPD’.

<sup>8</sup> See Ibidem.

11. The Worldcoin Foundation collects biometric data on Portuguese territory for identification by capturing images of iris, eyes and face of individuals, which in itself constitutes the processing of personal data. The data collected is subsequently subjected to further processing operations.

12. The Worldcoin Foundation carries out this processing of personal data in various locations distributed across the national territory, including Algés, Almada, Amadora, Braga, Cascais, Guimarães, Lisbon, Loures, Maia, Matosinhos, Porto, Portimão, Rio de Mouro, Setúbal, Sintra, and Viana do Castelo<sup>9</sup>.

13. Needasterisk, Unipessoal, Lda. and Eaglebrands Trade Marketing, Lda. were indicated as service providers in the implementation of the Worldcoin project in Portugal<sup>10</sup>.

14. Needasterisk, Unipessoal, Lda. acts as an 'Orb' operator in the process of collecting biometric data, as stated to the CNPD<sup>11</sup>.

15. Orb operators earn income depending on the number of people joining and signing up with Worldcoin. The Orb Operator's Code of Conduct refers to the gains from the signup of end users, in its rule # 6, stipulating that the Orb operator should focus on the rewards generated by signing up end users rather than those from sub-operators<sup>12</sup>.

16. Eaglebrand Trade Marketing, Lda, acts as a consultant for the project, providing a variety of services, including the services of demand for spaces and locations, as well as rental management where Worldcoin operators are allocated, and does not operate 'Orb', as also stated<sup>13</sup>.

#### **(A) The processing of biometric data, in particular its collection**

17. The collection of personal data is carried out in person, using a device called 'Orb', which captures high-resolution and multispectral images of each iris, an eye image and a face image. These images are processed locally in the 'Orb', using artificial intelligence models to measure that it is a human person and is alive<sup>14</sup>.

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<sup>9</sup> See information available at <https://WorldCoin.org/find-orb> and attached to the case file as document 'worldcoin – data collection sites in Portugal.pdf'

<sup>10</sup> See Response to CNPD, set out in the clarification of question 26 in the Annex to the Response to CNPD.

<sup>11</sup> See the reply of Needasterisk to the CNPD, dated 4/9/2023, which is attached to the file.

<sup>12</sup> See the document attached to the case file, known as the 'Orb Operator Code of Conduct'.

<sup>13</sup> See Eaglebrand's reply to the CNPD, dated 4/9/2023, attached to the file.

<sup>14</sup> See Response to CNPD, set out in point 8 of Part I.

18. On the basis of the collected images, an alphanumeric code is generated in the 'Orb', using an algorithm, which is a unique identifier and personnel corresponding to the biometric data collected, called the 'Iris Code'<sup>15</sup>.

19. The Iris Code is then compared in real time with the iris code database in order to verify whether that code already exists, that is to say, whether the person concerned has already signing up in the World ID, whether he or she has had his or her biometric data collected and, consequently, whether he or she has already received the corresponding cryptocurrency. If the Iris Code is new, it is stored in that database<sup>16</sup>.

20. After the generation of the Iris Code and its insertion in the database, the images captured by the 'Orb' may be destroyed locally on the device, or temporarily kept there until they are sent to Worldcoin Foundation's systems for further processing operations for other purposes, depending on whether or not the data subjects have consented to its further use<sup>17</sup>.

21. The 'Orb' has the capacity to carry out all these processing operations, including storing the encrypted data and sending it to Worldcoin Foundation systems hosted by Amazon Web Services<sup>18</sup> (AWS).

22. 'Orb' operators and sub-operators are taught to encourage individuals to consent to the storage and use of their biometric images by Worldcoin, saying that this is a benefit for users, as they will not need to return to the Orb each time Worldcoin updates the algorithm that generates the Iris Code, which happens around three times a year, and stating that most people enable this functionality by consenting to such data processing<sup>19</sup>.

23. Also when informing individuals to obtain their consent to the processing of biometric data, in particular as regards the storage of data and its use for training Worldcoin algorithms, it is explained that if data subjects choose not to give their consent to the storage and subsequent use of the images (not enabling that possibility), they will have full functionality, but potentially some inconvenience, as they will need to go back through the Orb to re-check the Iris Code when algorithms are updated<sup>20</sup>.

24. Biometric data identify the uniqueness of each human being and are intrinsic to each individual.

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<sup>15</sup> CF. Data Protection Impact Assessment, version updated 2/8/2023, pp. 22-23, as set out in Annex I to Response to CNPD, and points 3 and 4 of Part I of the Response to CNPD'

<sup>16</sup> See Response to CNPD in Part I, point 8, and Data Protection Impact Assessment in Annex I of the Response to CNPD, pp. 22-23.

<sup>17</sup> See Response to CNPD, set out in the clarification of question 8 in the Annex to the reply to the CNPD.

<sup>18</sup> CF. Data Protection Impact Assessment in Annex I of the Response to the CNPD, pp. 22-23.

<sup>19</sup> CF. Content of Worldcoin operator training, slides 129-131, as set out in Annex 4 to the Response to CNPD.

<sup>20</sup> See Worldcoin Foundation Sensitive Biometric Data Consent Form, version 1.4, available on 10/8/2023, on the Worldcoin Foundation website, attached to the case file.

25. Such data is claimed to be the basis of a universal World ID with a view to being used as proof of personhood and human condition, i.e. establishing whether an individual is both human and unique<sup>21</sup>.

26. Thus, the World ID is presented by Worldcoin as a global digital passport that guarantees people a way to preserve their privacy to authenticate themselves as humans online in a world where intelligence is no longer a discriminator between people and AI<sup>22</sup>.

27. Worldcoin Foundation argues that the possibility for an individual to claim that he or she is a natural and unique person in the World ID users network, without having to provide additional evidence of their identity, is a potentially useful functionality for a number of online services<sup>23</sup>. The value for users is that World ID based applications will soon be developed, so those who already have a World ID will be able to confirm their identity<sup>24</sup>.

28. In order for biometric data to be processed, including the collection operation, potential adherents must first install an application (World App) on their electronic device, which is also a portfolio of cryptocurrency<sup>25</sup>.

29. The development, distribution and maintenance of such implementation is the responsibility of TFH, as described in paragraph 10 above.

30. With the installed application and the assistance of the 'Orb' operator, the data subject/adherent must go through the steps of the 'signup procedure', which starts with the creation of an account, the indication of the mobile phone number, the declaration of being 18 years old, the statement of compliance with the privacy policy and the terms and conditions of the service (by reference to online links).

31. The signup process ends with reading a two-dimensional code (QRcode), received on the data subject's mobile phone, and 'read' by the 'Orb', which places the apparatus in capture mode, collecting images of iris, face and contour of the eyes<sup>26</sup>.

32. These images are processed in "Orb" and the generated code is sent directly via the internet to Worldcoin Foundation systems. The process ends with downloading from the World ID to the user's mobile device<sup>27</sup>.

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<sup>21</sup> See the Response to CNPD, set out in point 2 of Part I.

<sup>22</sup> See <https://pt-pt.worldcoin.org/faqs>, "what is WorldID").

<sup>23</sup> See the Response to CNPD, set out in points 1 and 2 of Part I.

<sup>24</sup> Cf. Content of Worldcoin operator training, slides 20-22 contained in Annex 4 to the Response to CNPD.

<sup>25</sup> See CNPD inspection report, following the inspection action of 11/8/2023 at one of the data collection sites, page 2, attached to the file.

<sup>26</sup> Ibid., page 3.

<sup>27</sup> See Data Protection Impact Assessment, set out in Annex 1 to the Response to CNPD, pp. 8-9, attached to the case file.

33. In return for the transfer of their personal data, each citizen receives *tokens* corresponding to cryptocurrencies, and there is evidence of the possibility of converting them into physical money<sup>28</sup>, which is an essential element for increasing adherence to this project.

**(B) Recent complaints received in the CNPD: collection of minors' data, insufficient information, inability to erase data and revoke consent and economic vulnerability of citizens**

34. From 18 February 2024 to 15 March 2024, several complaints from citizens have reached CNPD, reporting, *inter alia*, that biometric data of minors are being collected and subsequently further processed. It is stated that the biometric data of minors have been processed without the authorisation of their legal representatives (see complaints in the case file)<sup>29</sup>.

35. It should be noted that, in order to adhere to the procedure for collecting biometric data, there is no mechanism for verifying the age of the individual, since the Orb operator does not take the necessary care to confirm age, in particular by displaying an identity document.

36. In that context, the CNPD carried out, in connection with the processing of biometric data of minors, a number of investigations with a view to better establishing the facts, which are annexed to the case file.

37. Since 2 March 2024, the Commission also received complaints in which it is stated that the data subjects intended to exercise the right to erasure of their data and that they were not guaranteed such a right (see the complaints attached to the case file)<sup>30</sup>.

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<sup>28</sup> See page extracted from the Facebook social network attached to the case file.

<sup>29</sup> Better identified in the case file with the codes: FORM-P.20240225105023.BIK931; FORM-P.20240225190230.1SWX8E; VVDBIO.20240226162944.QTMX48; FORM-P.20240306211753.L5ARCU; FORM-D.20240306221241.NUMP8U; FORM-P.20240307115907.C8KIJY; FORM-P.20240307214745.7IIQCC; FORM-P.20240308115619.XX14HK; FORM-D.20240309141134.23H951; FORM-D.20240310191712.1RED4B; VVDBIO.20240310195102.BL5KHK; VVDBIO.20240311131051.UB79XD; VVDBIO.20240311141406.T5JWIA; FORM-P.20240311124123.TKTBLF; FORM-P.20240312185854.KJRVDA; FORM-D.20240313103517.9E79E7; FORM-D.20240313182234.WMQIWX; FORM-D.20240313223602.YYWDFK; FORM-P.20240314101948.C7DL18; VVDBIO.20240314124732.HTMF3E; FORM-D.20240314180027.KFHDXI.

<sup>30</sup> Better identified in the case file with the codes: FORM-P.20240225105023.BIK931; FORM-P.20240225190230.1SWX8E; VVDBIO.20240226162944.QTMX48; FORM-P.20240306211753.L5ARCU; FORM-D.20240306221241.NUMP8U; FORM-P.20240307115907.C8KIJY; FORM-P.20240307214745.7IIQCC; FORM-P.20240308115619.XX14HK; FORM-D.20240309141134.23H951; FORM-D.20240310191712.1RED4B; VVDBIO.20240310195102.BL5KHK; VVDBIO.20240311131051.UB79XD; VVDBIO.20240311141406.T5JWIA; FORM-P.20240311124123.TKTBLF; FORM-P.20240312185854.KJRVDA; FORM-D.20240313103517.9E79E7; FORM-D.20240313182234.WMQIWX; FORM-D.20240313223602.YYWDFK; FORM-P.20240314101948.C7DL18; VVDBIO.20240314124732.HTMF3E; FORM-D.20240314180027.KFHDXI.

38. Finally, also via complaints, it came to the attention of the CNPD that a number of data subjects only became aware of the risks involved in such data processing, due to the recent media coverage of the phenomenon, and that those risks have never been duly explained to them (see complaints attached to the case file)<sup>31</sup>.

39. Moreover, they claim they were not provided with information concerning the processing carried out, in particular the data, which was actually being collected and for what purposes and how the rights provided for by law with regard to the protection of personal data could be exercised (see complaints attached to the case file).

40. It has also been reported by the media that there are a number of citizens who authorise such data collection and further data processing, because they are economically weak and/or are not fully aware of the aims and implications of their participation in the Worldcoin project (see news and television reports disseminated between the end of February 2024 and the present date, attached to the case file).

41. The text provided for joining the World App application (“I agree with Biometric Data Consent Form and User Terms and Conditions of the Foundation”) did not provide any direct information concerning the processing of biometric data, but merely included links to the TFH Privacy Notice and User Terms<sup>32</sup>, and it is not even mandatory to open such links to ensure that the potential adherent has the essential information to accept that his/her personal data is processed<sup>33</sup>.

42. The information provided in that privacy notice also makes no mention to the collection and other processing operations of biometric data, but merely sets out the terms and services of the World App, which in turn refers to a new link in the body of that text, and finally to display the consent form for the processing of biometric data by the Worldcoin Foundation.

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<sup>31</sup> Better identified in the case file with the codes: FORM-P.20240225222410.E3E4GL; FORM-P.20240306211753.L5ARCU; FORM-D.20240307105641.QSKSZX; FORM-P.20240307125210.T1ZP8F; FORM-P.20240307125415.DJTAXU; FORM-D.20240307140442.I4FVMZ; FORM-D.20240308200256.1ITMIY; VVDBIO.20240310193523.YIFODJ; FORM-D.20240311120619.94A7SJ; FORM-P.20240311175624.BD6X55; FORM-P.20240312115915.I3HPD4; FORM-D.20240312214326.84EQTP.

<sup>32</sup> The hyperlink addresses (<https://worldcoin.pactsafe.io/legal.html#contract-qx3iz24-o> and <https://worldcoin.pactsafe.io/legal.html#contract-9l-r7n2jt>) refer to pages presenting information from TFH, not from the Worldcoin Foundation, which is the controller of biometric data. Although the versions of the documents have already undergone more than one change in the last week, it is confirmed that it is information about the data processing carried out by TFH, within the World App, and not about the processing of biometric data by Worldcoin Foundation.

<sup>33</sup> See CNPD inspection report, following the inspection of 11/8/2023 at one of the data collection sites, attached to the case file.

43. This complex route requiring successive steps does not constitute an easily accessible, transparent or intelligible right to information.

44. In addition, the declaration of consent is partly provided in English (Eu concordo com *Biometric Data Consent Form* e com *User Terms and Conditions* da Fundação).

45. In version 1.4 of the 'Worldcoin Foundation Sensitive Biometric Data Consent Form'<sup>34</sup>, it is further stated that 'if you decide to sign up in an Orb, we will create an unique iris Code [...] which can no longer be deleted (if we delete it, the proof of exclusivity would not work)'. This was publicly reiterated on television, on 13/3/2024, by the Regional Director of TFH, who acts as a processor of Worldcoin Foundation: "(...) these data will be deleted. The Iris Code does not, because, once again, the iris code is the proof of humanity"<sup>35</sup>.

46. Moreover, although in point 2.5 of 'Worldcoin Foundation Sensitive Biometric Data Consent Form' states that consent can be revoked, the fact remains that this information was not and is not made available to the data subject at the time of the creation of the World App account. Indeed, the Biometric Data Consent Form and the User Terms and Conditions links directing to TFH 's pages do not contain this information (see Annex V of the CNPD Inspection Report cited above).

### **(C) The advance booking of biometric data collection due to increased demand**

47. At the beginning of March 2024, the CNPD also became aware, through various media reports, that the collection of biometric data for identification, by capturing images of the iris, eyes and face of individuals, was now being carried out only by advance booking, due to the high increase in demand, with people queuing to wait for the data collection, including minors.

48. At the beginning of this month, it was estimated that in Portugal more than 300.000 (three hundred thousand) people had already had their biometric data collected, including minors<sup>36</sup>.

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<sup>34</sup> See Worldcoin Foundation Sensitive Biometric Data Consent Form, version 1.4, available on 10/8/2023, on the Worldcoin Foundation website, attached to the case file.

<sup>35</sup> In accordance with declarations to the TVI National Journal.

<sup>36</sup> See the article of the newspaper 'Expresso', citing a source of the Worldcoin project, in its edition of 1 March 2024, page 16, attached to the case file.

49. Actually, at the beginning of September 2023, the Worldcoin Foundation had nine (9) sites, all located in large retail stores, to collect biometric data through the Orb and stated that it had already achieved more than 180.000 (one hundred and eighty thousand) users in Portugal<sup>37</sup>.

50. At the beginning of March 2024, after six months, the number of users increased very significantly by around 67 per cent, while data collection sites almost doubled to 17 sites.

51. The CNPD also learned from the media that there would be a financial reward for those who had already provided their biometric data if they brought other persons to have their data collected, what may have contributed to an increase in demand.

## ii. The conviction of the facts as proven

52. The CNPD considers as confirmed the facts set out above, based on the findings and evidence gathered by the CNPD Inspection Unit, either through the onsite inspection in one of the locations where biometric data was collected via the Orb, on 11/8/2023, or on the remote checks carried out; based on the statements made by Worldcoin Foundation, TFH, Needasterisk, Unipessoal, Lda. and Eaglebrands Trade Marketing, Lda., in response to the questions put by the CNPD (see the documents in the case file); based on the verifications of the websites and documents made available there by Worldcoin Foundation and TFH, and other supporting evidence contained in the file.

53. This is also supported by the content of the dozens of complaints received in this Commission, with particular reference to complaints relating to the collection of personal data of minors, and the preparatory acts carried out in that context or still undergoing, as well as information provided by data subjects in statements to the media.

54. The CNPD continues to receive complaints almost daily on the facts referred to in this decision, including on the collection of biometric data of minors.

## III. Law

55. To the processing of personal data of data subjects on the national territory by a controller who is not established in the European Union, where the processing activities are related to the provision of services,

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<sup>37</sup> See the reply to the CNPD, set out in point 3 of Part IV, attached to the file.

such as the processing of personal data carried out by the Worldcoin Foundation, the GDPR applies by virtue of Article 3(2) (a) GDPR.

56. The CNPD is the national supervisory authority for the purposes of the GDPR, pursuant the combined provisions of Article 3 and Article 4(2) and Article 6(1) (b) of the Law implementing the GDPR.

57. Pursuant to Article 55(1) of the GDPR, the supervisory authorities are competent to carry out the tasks and exercise the powers conferred on them by the GDPR on the territory of their own Member State, with the result that the CNPD is competent in the present case, since some data processing operations carried out by the Worldcoin Foundation, namely the in-person collection of biometric data, are carried out on national territory, and Article 56 of the GDPR does not apply here.

58. The CNPD monitors and implements the application of the GDPR, and investigates the processing of personal data under the tasks set out in Article 57(1) (a) and (h) with the investigative powers conferred by Article 58(1) (b) GDPR.

#### **i. The enhanced protection of biometric data**

59. Personal data resulting from specific technical processing relating to the physical or physiological or behavioural characteristics of a natural person allowing or confirming its unique identification of that natural person shall be considered biometric data within the meaning of Article 4 (14) GDPR.

60. The Worldcoin Foundation is the controller of personal data relating to the World ID, including the processing of biometric data of iris, eyes and face within the meaning of Article 4 (7) GDPR.

61. Biometric data are qualified as special data under Article 9(1) of the GDPR in view of their sensitivity from the point of view of fundamental rights and freedoms, the uniquely identifiable nature of a person and his or her potential for discrimination. The context in which they are processed may entail significant risks to the rights and freedoms of data subjects<sup>38</sup>.

62. In fact, it is a personal element, in that it is an unrepeatable identifier in every human being, resulting in its special protection (see Article 9(1) of the GDPR). The use of biometrics makes it possible to measure the innate physical characteristics of each human being, such as iris, face, fingerprint, hand contour or voice. In addition, although the characteristics of physical data are immutable, as technology develops more and more news of spoofing are emerging.

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<sup>38</sup> See Recital 51 of the GDPR.

63. It is not at stake here that biometric authentication and identification is, as a rule, more robust than other methods, such as the use of authentication credentials with combinations of username and password.

64. While, on the one hand, these credentials are more likely to be attacked, because they do not require great technological knowledge, often the use of social engineering methods is sufficient, on the other hand, the damage they cause is limited in time, for example, it is sufficient to change the user name and password.

65. Attacks carried out in order to retain biometric data already have irreversible consequences, as the data subject cannot change his or her physical characteristic that gave rise to the biometric *template*, resulting in real and high risks of identity theft, as they will pose a constant threat to the identity of the citizen if stolen.

66. As a result, any act of appropriation of biometric data, undermining the security of a person's identity, becomes attractive to the world of cybercrime.

67. However, the processing of biometric data is subject to a particularly restrictive regime, the processing of biometric data being prohibited as a rule (see Article 9(1) of the GDPR), although, exceptionally, such processing may only be based on one of the grounds for lawfulness laid down in Article 9 (2) of the GDPR.

68. Building on that list, only consent will be, in the abstract, the adequate legal basis for the data processing at issue here.

69. However, given the nature of the data concerned, such consent should also be ensured with enhanced care by ensuring that it is free, informed, unambiguous and explicit, always for the specific purposes which may justify it, as is apparent from Article 4 (11) in conjunction with Article 7 and Article 9(2) (a) of the GDPR.

70. The mere reference to documents or information, which are essential for the purpose of forming the data subject's wishes, to successive layers of information, together with the fact that some of the information provided is in English, does not meet the legal requirements for the accessibility of the information addressed to data subjects, laid down in Article 12(1) of the GDPR; therefore, the information provided to data subjects is deemed to be deficient, by virtue of the obligation laid down in Article 13 of the GDPR.

71. Thus, in the present case, the inadequacy of the information provided on the processing of biometric data constitutes, first of all, a serious failure to comply with the legal obligations incumbent on the controller, which directly affects the principle of transparency laid down in Article 5(1) (a) of the GDPR, putting in crisis the validity of the consent obtained, because it does not constitute informed consent.

72. Moreover, there is no reference or information as to the specific purposes which would justify such processing of data in the light of the creation of the World ID, which is truly undefined in its subject matter – with reference to a set of supposed abstract advantages of verifying human identity in a world dominated by

artificial intelligence (AI). This would always put genetically in crisis any free and informed consent that could authorise the processing of particularly sensitive data, since it does not represent any concrete element that would make possible to make a conscious declaration of will, to be measured in relation to present and future uses, controllable, of the personal data concerned, which are univocal and permanent.

73. In addition, at the time of collection, no information is given to the data subject on the right to withdraw his or her consent, as derived from the legal obligation laid down in Article 13(2) (c) of the GDPR, where the data processing is based on Article 9(2) (a) of the GDPR, as in the present case.

74. Therefore, the information provided is not sufficient to determine freely and consciously the decision of the data subject to dispose of personal data, mostly where particularly sensitive and specially protected data are at stake.

## **ii. The processing of sensitive data of minors**

75. Those reasons are even more obvious where sensitive personal data of minors are concerned.

76. As stated in point 35 above, in order to join the procedure for collecting biometric data there is no mechanism for verifying the age of the adherent and there is no care on the part of the Orb operator to confirm age, in particular by asking to display an identity document.

77. It should be noted, first of all, that minors do not even lack legal capacity to do so (see Article 123 of the Civil Code), independently of their willingness to consent, even if the data processing is signaled as agreed by them.

78. Minors as particularly vulnerable persons are the subject of special protection by the national and European legislators, with no exceptions to that principle being permitted unless provided by law.

79. All of this is aggravated by the fact that, as mentioned above, the erasure of some data is not allowed, the processing being maintained after the withdrawal of consent, rendering irreparable the damage resulting from unlawfulness.

80. It should also be noted that the impossibility of exercising the right to erasure is expressly mentioned in the Worldcoin Foundation's 'Sensitive Biometric Data Consent Form' where: «[I]f you decide to sign up with an Orb, we will create an exclusive iris code... which can no longer be deleted (if we eliminate it, the proof of exclusivity would not work)»<sup>39</sup>.

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<sup>39</sup> See document "Worldcoin\_form consent.pdf" attached to the case file.

81. This impossibility of exercising the right to erasure was also reiterated to the general public via television by the Regional Director of TFH, who acts as a processor of Worldcoin Foundation, who declared "(...) these data will be deleted. The 'Iris Code' does not, because, once again, the iris code is the proof of humanity<sup>40</sup>, i.e. the 'iris code' is personal data that can never be erased, in breach of the right to erasure under Article 17 of the GDPR.

82. This denial of the guarantee of the right to erasure, assumed by the controller, also reflects the impossibility of guaranteeing the right to withdraw consent, in so far as if the data subject exercises that right, the consequence would be the erasure of the data pursuant to Article 17(1) (b) of the GDPR. It therefore appears that there is also an infringement of Article 7(3) of the GDPR. It should be noted that data subjects concentrate in themselves a set of fundamental rights which cannot be waived and are enshrined in Article 8 of the Charter of Fundamental Rights of the European Union (CFREU) and Article 35 of the Constitution of the Portuguese Republic (CRP), in addition to the recognition in Article 16 of the Treaty on the Functioning of the European Union.

83. The right to the protection of personal data must also be combined with other related fundamental rights, such as the rights to privacy, personal identity, the genetic identity of the human being, the development of personality, good name, reputation and image (Article 26 CRP), as well as the principle of equality (Article 13 CRP) and the right to liberty (Article 27 CRP) – rights, freedoms and constitutional guarantees that are particularly relevant both in physical reality and in the digital environment.

84. In short, as is apparent from Recital 38 of the GDPR, 'children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data'.

### **iii. The necessity and urgency of a temporary limitation of the processing**

85. The dozens of complaints received by the CNPD between 18 February 2024 and 15 March 2024 and the continuous flow of complaints submitted in recent days indicate that the processing of biometric data has not complied with all the legal requirements of the GDPR.

86. The fact that biometric data from minors are currently being taken in the Worldcoin project without the consent of their legal representatives would in itself justify action by the CNPD to protect the rights, freedoms

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<sup>40</sup> According to Ricardo Macieira's statement to the TVI National Journal on 13/3/2024.

and safeguards of this category of data subjects, who deserve special protection, in the light of the evident unlawfulness.

87. However, the CNPD's knowledge that biometric data of minors have been collected and processed under the conditions and for the purposes described above, in return for the receipt of virtual currency, and without the possibility of deleting some data, undoubtedly requires the increased need for urgent action by the CNPD, capable of preventing violations of the fundamental right to the protection of personal data, which would otherwise be impossible or difficult to remedy, or would allow the perpetuation of the collection of biometric data without the necessary guarantee of compliance with all legal requirements.

88. In view of the whole phenomenon, the CNPD is also aware that similar complaints and alleged illegalities are widespread and common to other countries of the European Union, where the Worldcoin project takes place and biometric data are collected.

89. In recent weeks, there have been numerous news and statements in the media of a number of citizens who will have signed up the service, confirming the likelihood of the facts reported to the CNPD, which give rise to significant social alarm.

90. The evident upward trend in the number of persons willing to provide their biometric data to receive cryptocurrency, as demonstrated by the statistics of the Worldcoin Foundation itself, combined with the increase in the number of data collection sites, increasing the number of minors who may provide their personal data, reinforce the need for urgent action by the CNPD before the investigation process is completed and the final decision is issued.

91. The CNPD's duty to act is supported by the case-law of the Court of Justice of the European Union (CJEU), which emphasises that, where the data subject is not afforded an adequate level of protection, the supervisory authority is required, under EU law, to take appropriate action in order to remedy any findings of inadequacy, irrespective of the reason for, or nature of, that inadequacy. In that regard, Article 58, paragraph 2, of the GDPR lists the various corrective powers that the supervisory authority may exercise. It is for that supervisory authority to choose the appropriate means to carry out with all due diligence its task of ensuring full compliance with that regulation. This follows from the recent judgment of the CJEU of 14 March 2024 and the case law cited therein.<sup>41</sup>

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<sup>41</sup> Judgment of 14 March 2024, *Caso Újpesti Polgármesteri Hivatal*, Case C-46/23, ECLI:EU:C:2024:239, paragraphs 33 and 34.

92. All in all, the risk to the fundamental right to the protection of personal data of data subjects, in such a sensitive dimension, is quite high, justifying the prevalence of those data subjects' rights over others and their underlying interests, particularly economic ones, and justifies the urgent intervention of the CNPD, in so far as the potential unlawfulness of such processing will result in damage to the rights and freedoms of data subjects, particularly where they are minors.

93. In order to determine the urgency of interim measures, it should be borne in mind that the purpose of the interim relief is to ensure the effectiveness of the future final decision. Urgency must therefore be assessed in the light of the need to adopt such measures in order to avoid serious or irreparable harm, as is apparent from the case law of the CJEU<sup>42</sup>.

94. In the present case, in view of the complexity of the ongoing investigation, due to the technological issues inherent to the Worldcoin project, the need for further steps and the complaints that have been recently added to it, in the absence of a final decision in due time, it is considered that the urgency and the need for the CNPD to adopt an interim measure under its corrective powers is fully justified.

95. In the light of such circumstances, under the corrective powers conferred on it by Article 58(2) of the GDPR, it is appropriate, necessary and proportionate to impose Worldcoin Foundation, as the data controller concerned, a temporary limitation of the processing of biometric data, in relation to the processing operation of the collection of iris, eyes and face data, in accordance with Article 58(2) (f) of the GDPR.

96. This measure is appropriate, since it is adequate to achieve the objective pursued by interrupting the collection and subsequent processing operations of personal data, revealing the effectiveness of the protection of the essential content of the fundamental right to data protection, in particular the data of minors.

97. The measure is necessary because the impairment of the rights affected is not likely to be prevented by a less restrictive measure, among those set out in Article 58(2) of the GDPR.

98. Finally, the temporary restriction of data processing is also a measure, which complies with the principle of proportionality in the strict sense, since the damage that may result from the adoption of that measure does not outweigh the harm, which it intends to avoid by its adoption. Such a measure constitutes an indispensable interference with the activity of the controller, justifying the restriction of its right to freedom of private economic initiative, in order to achieve the effectiveness of the defense of the public interest in safeguarding fundamental rights.

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<sup>42</sup> ByteDance v Commission, Case T-1077/23, ECLI:EU:T:2024:94, paragraph 13.

99. Indeed, as explained above, there is a well-founded fear that, if this measure is not adopted, this could lead to a *fait accompli* situation – it should be noted that once biometric data have been provided, the processing of some data will continue and the deletion of some data is not possible – or, at the very least, to damage that is difficult to repair for a very large number of particularly vulnerable data subjects, such as minors and people in economic vulnerability, whose biometric data are being processed, without their consent being given in appropriate terms.

100. In the light of what is described in paragraphs 61, 62 and 65 of this decision, as regards the sensitivity of biometric data, as an unrepeatable identifier in each human being, and the real risks of identity theft, it appears that the resulting serious or irreparable harm is clearly greater than the harm that the measure of temporary limitation of the data processing, consisting of the collection of biometric data, may cause to the Worldcoin Foundation.

#### **IV. Decision**

101. In the light of the foregoing, in view of the facts established, the evidentiary evidence, and given the urgency of the CNPD's action in order to ensure immediately the right to the protection of personal data, the fundamental right enshrined in Article 8 of the CFREU and in Article 35 of the CRP, the CNPD decides, in accordance with the corrective power laid down in Article 58(2) (f) of the GDPR, read in conjunction with Article 6(1) (b) of Law No 58/2019 of 8 August 2019, and in conjunction with Article 89(1) of the Code of Administrative Procedure:

**Order Worldcoin Foundation, within a maximum of 24 (twenty-four) hours, to temporarily limit the processing of biometric data in relation to the processing operation for the collection of iris, eyes and face data in Portugal (mainland Portugal, the Autonomous Region of Madeira and the Autonomous Region of the Azores) for a period of 90 (ninety) days.**

102. In view of the above, and given the urgency of the temporary limitation of the processing of personal data on national territory, the prior hearing of the persons concerned is not required, in accordance with Article 89(2) of the Code of Administrative Procedure.

103. This decision is to be notified to the Worldcoin Foundation:

- a. In the person of its legal representative;
- b. Through its data protection officer, to the email address available in the case file, in accordance with the combined provisions of Article 39(1) (e) of the GDPR and Article 112 (1) (c) and (2) (a) of the Code of Administrative Procedure.

104. This decision is to be notified to Tools for Humanity Corporation, as processor of Worldcoin Foundation, and to its German subsidiary Tools for Humanity GmbH.

105. It should be given knowledge of this decision to Needasterisk, Unipessoal, Lda, which provides the service of Orb Operator.

Adopted at its meeting on 25 March 2024

Paula Meira Lourenço

(President)