

CNS 25/2018

Opinion on the query formulated in relation to the communication of data of the students enrolled in the Training and Insertion Programs in the Territorial Services of the same Department and an Education Consortium.

A letter is presented to the Catalan Data Protection Authority in which a query is raised in relation to the communication of data of students enrolled in the Training and Insertion Programs in the Territorial Services of the same Department and an Education Consortium.

Specifically, it is explained that the Initial Professional Qualification Programs, which have become Training and Insertion Programs from the 2014-2015 academic year, and which the Department carries out, are voluntary programs aimed at young people between 16 and 21 years of age who have left compulsory secondary education (ESO), without obtaining a degree, and who, at the time of starting their studies, are not following studies in the education system or participating in higher training actions. Their primary purpose is to provide these young people with the possibility of rejoining the education system to continue professional training studies, as well as facilitating the essential learning to access the job market with better possibilities obtain qualified and lasting employment.

It is pointed out that the Department manages, through the General Directorate of Training Professional and Special Regime Education, the personal data file "Initial Professional Qualification Programs", in order to process the registration processes, registration of evaluation results and issuance of the corresponding certifications.

It is pointed out that Order ENS/125/3011, of May 13, updating the files containing personal data managed by the Department of Education that creates this file, only expressly provides for the transfer of data to the Service 'Occupation of Catalonia, to justify the implementation of the actions that receive funding from the European Union.

As set out in the consultation, the Territorial Services of the same Department and an Education Consortium, would have requested to have the identification data of the students enrolled in the Training and Insertion Programs (PFI) in their territory, with the purpose of following the students' itinerary once they have left the compulsory studies.

In the face of these requests, the Authority's opinion is sought on the possibility of providing them with this information, its suitability to the regulations for the protection of personal data, and whether it is necessary to envisage it as a transfer of data.

Analyzed the query, which is not accompanied by any other documentation, this Advisory Juridica issues the following report:

(...)

II

Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (hereinafter, RGPD), will apply to from next May 25, 2018 (article 99), and therefore, the analysis on the possibility of providing this information will be carried out taking into account mainly this rule.

This consultation raises the possibility of providing certain personal information managed by the General Directorate of Initial Vocational Training and Special Regime Education through the "Initial Vocational Qualification Programs" file to two different recipients: The respective Territorial Services of the Department, of on the one hand, and the Barcelona Education Consortium, on the other.

Thus, there would be a first flow of information that would occur between several administrative bodies of the same department (Directorate General and Territorial Services), and therefore within the same legal entity. Article 4.9 RGPD defines the "recipient": the natural or legal person, public authority, service or other body to which personal data is communicated, whether or not it is a third party. The recipients of the information, in this case, would not be third parties and consequently the transmission of information that may occur from one administrative body to another, would not be considered as a transfer or communication of data to third parties.

On the other hand, there would be a second flow of information between a Department of the Generalitat and the Barcelona Education Consortium, an association between the Generalitat of Catalonia and Barcelona City Council, created by the Barcelona Municipal Charter, approved by the Law 22/1998. of December 30, to exercise the powers attributed in article 61.1 of this law for the joint management of the functions, activities and services established in articles 123 and 124 in matters of education, within the municipal territory . It is therefore an entity with its own legal personality which, therefore, would constitute a transfer or communication of data to third parties. Article 4.10 RGPD defines "third party" as "the natural or legal person, public authority, service or other organism distinguished from the interested party, the person responsible for the treatments, the person responsible for the treatment and the persons authorized to treat personal data under the authority directly from the person in charge or the person in charge."

The RGPD does not differentiate the transfer of data to third parties with respect to other processing operations, understood as: "any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as the collection , registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction" (art. 4.2) RGPD) . More extensive definition, but in the same line of article 3.c) of the current LOPD.

Art.5.1.a) RGPD establishes that all processing of personal data must be lawful, loyal and transparent in relation to the interested party ("~~lawfulness, loyalty and transparency~~"). In order for this treatment to be lawful, one of the conditions of article 6 RGPD must be met, or in the

in the case of special categories of data, it is necessary to comply with the provisions of article 9 RGPD.

From here it is necessary to analyze whether the proposed treatment operations (sending of information from a General Directorate to the Territorial Services of the same Department, and to the Consorci d'Educació de Barcelona) would be lawful for the purposes of the provisions of the RGPD .

III

Access by the Territorial Services to the identification data of students enrolled in the Training and Placement programs, managed by the General Directorate of Training Initial Professional and Special Regime Education (administrative body responsible for the treatment), requires compliance with, among others, the principles of purpose and minimization of data, as with any data processing.

Article 5.1.b) RGPD provides that "1. personal data will be: b) collected for specific, explicit and legitimate purposes, and will not be subsequently processed in a manner incompatible with said purposes; in accordance with article 89, section 1, the further processing of personal data for archival purposes in the public interest, scientific and historical research purposes or statistical purposes will not be considered incompatible with the initial purposes ("limitation of the purpose") This principle was included in article 4.2 LOPD.

Therefore, the data cannot be used in a manner incompatible with the purpose for which it was collected. It is necessary to analyze the purpose for which the Department initially collected the student data that should be provided to the Territorial Services, and what is the purpose for which these territorial bodies need them.

Order ENS/125/2011, of May 13, updating the files containing personal data managed by the Department of Education, creates the file "Initial Professional Qualification Programs" regulated in Annex I, section 40 of this rule.

The purpose of the treatment is "the processing of the enrollment processes in the initial professional qualification programs, of the participation of people who are experts in the training of the students of the programs," and specifies its uses in "the derivatives of the management of processes of registration, of experts and teaching staff who provide training in these programs, the assessment record."

In this file, among others, the data of the students who study or want to study a professional training program of this type are collected, and the information in question comes from the educational centers that teach them. The data collection procedure is carried out using forms established for the purpose or electronic transmission.

Specifically, the file includes a) identifying data (name and address, DNI/NIF/NIE, postal and email address, telephone and fax contact), b) personal characteristics data (date and place of birth, nationality, sex and age), and c) academic data last year of ESO attended, training attendance, academic results, and job placement upon completion).

As indicated in the consultation, the Initial Professional Qualification programs referred to in article 60 of Law 2/2009, of July 10, on education, have become, from the 2014-2015 academic year, Programs of Training and Insertion (PFI).

These programs are regulated in Resolution ENS/102/2014, of May 21, which establishes the training and insertion programs, modified by Resolution ENS/241/2015, of February 9, and "are aimed at unemployed young people who are at least 16 years old and at most 21 in the year the program starts, who have left education compulsory secondary school without obtaining the degree and that at the time of starting the programs they are not following studies in the educational system or participating in other training actions." (section 1).

To opt for a training and professional placement program (PFI), as long as the requirements are met, an application must be submitted to the center and for the program requested in the first place (section 12). These centers must provide the Education Administration (Department of Education in the case of the Generalitat (Article 156.1 Law 12/2009)) with the data relating to pre-registration in accordance with the IT procedure established by the Department of Teaching, and once the registration process is complete, the center must confirm the registrations in the corresponding training and placement program management application. (Annex 2, section 9 of the Resolution).

In accordance with this, the identification data of students enrolled in the PFI are collected and initially processed by the respective educational centers where they apply for admission to them. These data are incorporated into the program management application, which is managed by the Department through the General Directorate of Initial Vocational Training and Special Regime Education, with specific purposes, and which, as indicated in the consultation letter, are the processing of enrollment processes, the registration of evaluation results, and the issuance of certifications.

Article 6 RGPD establishes that it is necessary to have a basis that legitimizes the treatment, either the consent of the affected person, or any of the other circumstances provided for in the same precept, such as that, "the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment " (6.1.e)), and this is recognized in a legal basis in accordance with the provisions of sections 2 and 3 of the same article .

Section 3 of this precept provides: "The basis of the treatment indicated in section 1, letters c) and e), must be established by:

- a) the Law of the Union, or
- b) the law of the Member States that applies to the person responsible for the treatment.

The purpose of the treatment must be determined in said legal basis or, in relation to the treatment referred to in section 1, letter e), it will be necessary for the fulfillment of a mission carried out in the public interest or in the exercise of conferred public powers to the person in charge of the treatment."

The referral to the legitimate basis established in accordance with the internal law of the member states requires, in the case of the Spanish State, in accordance with article 53 of the Constitution

Spanish, that the development rule, as it is a fundamental right, has the status of law.

Although it is still in parliamentary processing, the Draft Organic Law on the Protection of Personal Data, approved by the Council of Ministers on November 10, 2017, and published in the BOCG, Congreso de los Diputados Series A Núm. 13-1 of November 24, 2017 develops article 6 RGPD.

"Article 8. Data treatment protected by law.

1. The processing of personal data can only be considered based on the fulfillment of a legal obligation required of the person in charge, in the terms provided for in article 6.1 c) of Regulation (EU) 2016/679, when this is provided for by a rule of European Union law or a law, which may determine the general conditions of the treatment and the types of data subject to it as well as the assignments that proceed as a consequence of the fulfillment of the legal obligation. The law may also impose special conditions on treatment, such as the adoption of additional security measures or others established in Chapter IV of Regulation (EU) 2016/679.

2. The treatment of personal data can only be considered based on the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible, in the terms provided for in article 6.1 e) of Regulation (EU) 2016 /679, when it derives from a competence attributed by law."

Therefore, the Department to process the data of the students who enroll in the training courses (FPI), should have the consent of the interested party (student or legal representative of the minor) for the data to be processed your personal data to complete the registration process, the registration of evaluation results, and the issuance of certifications (article 6.a)), or with another legal basis that legitimizes the treatment.

Article 60. 2 of Law 2/2009, of July 10, on education, "2. The Department must program a sufficient and territorially balanced offer of initial professional qualification programs.(...)". At the same time, article 158.2, corresponds to the Education Administration of the Generalitat (through the Department of Education), in relation to the education system, among other powers "c) ..., to approve the instruments and the criteria for the programming of the educational offer of the Catalan Education Service in all the educational stages and courses established by this law, in accordance with article 44."

Beyond this, Organic Law 2/2006, of 3 May, on Education (LOE) establishes, in its additional provision 23a, a legal authorization for the processing of data that excludes the need for the affected (the student) or, where applicable, their legal representative gives consent for the processing of the data that is necessary for the exercise of the teaching and guidance functions attributed to the educational centers.

Specifically, it provides that "educational centers can collect the personal data of their students that are necessary for the exercise of their educational function. These data may refer to the origin and family and social environment, to personal characteristics or conditions, to the development and results of their schooling, as well as to those

other circumstances **whose knowledge is necessary for the education and orientation of the students" (first section).**

And he adds that "parents or guardians and the students themselves must collaborate in obtaining the information referred to in this article. The incorporation of a student in a teaching center implies consent for the processing of his data and, where applicable, the transfer of data from the center where he has previously attended school, in the terms established by the legislation on the protection of data. In any case, the information referred to in this section must be strictly necessary for the teaching and guidance function, and cannot be used for purposes other than educational without express consent" (second section).

In this case, the processing of students' personal data by the General Directorate (body responsible for the processing) for the purposes described, would have a legal basis that legitimizes it (Article 6.1.e) RGPD) based on the legal provisions mentioned.

It should be noted that according to section 5 of Resolution ENS/1102/2014, these programs (PFI) have three different modalities: Professional initiation plans (a), Work transition plans (b), and training programs and professional learning (c). Within the professional initiation plans, section 7 foresees the existence of adapted programs aimed specifically at students with special educational needs, and states that each educational center must adapt the development of the program to the characteristics of the students that attends

The treatment of information about students with special educational needs may involve the treatment of special categories of data, especially data relating to health, (article 9.1 RGPD), but in this case, the aforementioned legal provisions, in relation to the Article 9.2.g) of the RGPD would also allow the processing to be carried out to the extent that it is "necessary for reasons of essential public interest, on the basis of the Law of the Union or of the Member States, which must be proportional to objective pursued, essentially respect the right to data protection and establish appropriate and specific measures to protect the fundamental interests and rights of the interested party. "

Having analyzed the initial treatment, it is now necessary to assess the purpose for which the Territorial Services want to dispose of the identification data of the students enrolled in the programs (FPI) in their territorial scope.

As set out in the consultation letter, the Territorial Services would have requested to have the identification data of the students enrolled in the respective territories in the Vocational Training and Insertion programs, in order to follow the students' itinerary once these have left compulsory studies.

The objective, therefore, does not coincide with the purposes for which the students' data are collected and recorded (the processing of enrollment processes, the registration of assessment results and the issuance of the corresponding certifications) , but it would have a different scope, given that in this case the objective is not the education and guidance that derive from being enrolled in a Training and Insertion Program, but to follow the itinerary of students who have left compulsory secondary education (whether enrolled in a PFI or not). Even so, taking into account that the students who enroll in these

courses are young people who have not completed compulsory studies, both purposes could be related.

It is necessary to see if this new purpose that is intended to be given to the collected information has a treatment compatible with the initial purpose for which the data were collected. In this sense, article 6.4 of the RGPD establishes the following:

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

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

Given that in this case it does not seem that the consent of the affected persons is counted, it will be necessary to see first of all whether the laws in force can act as a legal basis for this change of purpose.

In relation to the functions that correspond to the educational administration, article 71.4 of the LOE establishes the following:

"It corresponds to the educational administrations to guarantee the schooling, regulate and ensure the participation of the parents or guardians in the decisions that affect the schooling and the educational processes of these students. Likewise, it is up to them to adopt the appropriate measures so that the parents of these students receive adequate individualized advice, as well as the necessary information to help them in their children's education."

For its part, article 156.1 of Law 12/2009 establishes that "The Educational Administration is the Administration of the Generalitat and acts through the Department".

Therefore, it is the responsibility of the Department of Education, of which the Territorial Services of Education are part, to ensure, with the participation of local bodies (art. 159.3 of Law 12/2009), for schooling, and this includes the students who have left compulsory studies

and who may or may not be participating in a PFI. Therefore, the aforementioned functions attributed to the Department, which are still related to the education and guidance of minors of compulsory school age, could act as a legal basis to detect and monitor enrollment or not in a PFI for students of compulsory school age who have abandoned compulsory studies.

Apart from this, the analysis of the circumstances surrounding this treatment can also lead to this conclusion of compatibility with the initial purpose.

As we have seen, from what is described in the consultation, it seems that what we are dealing with is trying to follow the itinerary of students who have abandoned compulsory schooling, while this situation lasts. It is therefore an action that, despite being different from the one that motivated the initial collection (follow-up of a PFI), is closely related to it given that these programs are aimed, precisely, at allowing the re-incorporation of these young people in the education system and thus facilitate their access to the labor market, through professional training. Although the consultation does not specify in detail which actions will include the monitoring of the itinerary of students who have left their studies, it seems clear that the purpose remains educational in nature, with respect to students who had previously been within the system of 'high school.

As stated in the consultation, the affected data would in principle be identifying and refer only to the students in the area of the corresponding territorial services. This element also plays in favor of compatibility, although it should be noted that, in reality, apart from identifying data, data about the studies being carried out would also be being accessed. On the other hand, as we have pointed out, in some cases in which it is a question of programs for students with special educational needs, it may also involve the disclosure of data of a particularly protected nature, but it would possibly not be a question of different data to that which it already had in their knowledge of the educational administration while the students were following compulsory schooling.

Also, from the point of view of the consequences that can be derived from it for the people affected, in this case, the young people who had abandoned compulsory education, it cannot be considered that these are unfavorable consequences, given that in any case, the department's action must be presided over by the interest of the minor in the terms already set out in current legislation.

Therefore, it can be concluded that the processing of the identification data of students enrolled in PFI by the territorial services of the Department of Education in order to follow the itinerary of students who have abandoned compulsory studies while this lasts situation can be considered compatible with the initial purpose for which the data were collected.

IV

The communication of data from the Department of Education to the Consorci d'Educació de Barcelona requires a legal basis that legitimizes the treatment, either the consent of the person affected, or any of the other circumstances provided for in article 6.1 of the RGPD.

In this case, the legal basis that would enable the treatment would be based on article 6.1. e) RGPD ("the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers conferred on the person responsible for the treatment"), in relation to the competence rules attributed to the Barcelona Education Consortium.

Article 156 of Law 12/2009, of 10 July, on education, provides that the Education Administration is the Administration of the Generalitat and acts through the Department (section 1).

However, article 160 of the same Law provides that the Barcelona Education Consortium, as an association, manages the powers granted to it by Law 22/1998, of December 30, of the Barcelona Municipal Charter .

Article 123 of the Municipal Charter establishes as areas of action in matters of education, among others, "e) The management of social security programs, specific professional training, special regime centers and the education of adults", as well as "i) the monitoring of compliance with compulsory schooling." The competences in these areas correspond to the Consorci d'Educació de Barcelona.

It follows from these forecasts that both public administrations (the Generalitat of Catalonia and the Barcelona Education Consortium) exercise shared competences in matters of education.

The purpose of communicating the information to the Consortium coincides with the purpose analyzed in the previous legal basis regarding the Territorial Services of the Department, but specified, in this case, in the municipal area of Barcelona. The Consortium has powers over the management of specific professional training programs and **over monitoring compliance with compulsory schooling** (article 123.e) ii) of the Barcelona Municipal Charter) within its territorial scope.

In this case, as in the previous one, the purpose of monitoring the itinerary of students who have left compulsory studies, seems to be related to the function of monitoring compulsory schooling attributed to the Consortium in its territorial scope, and therefore, would enable the processing of the identification data of students enrolled in the Training and Insertion programs in the municipality of Barcelona, to the extent that this information may be relevant and necessary for the intended purpose.

Therefore, it seems that the same conclusion must be reached, despite the fact that in this case the exercise of the function in the public interest entails having to carry out a communication of data to a third party.

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Conclusions

The processing of the identification data of students enrolled in PFI by the territorial services of the Department of Education in order to follow the itinerary of students who have abandoned compulsory studies while this situation lasts can be considered compatible with the initial purpose for which they are collected

data

The communication of this same information from the Department to the Barcelona Education Consortium constitutes a transfer or communication of data to third parties authorized under article 6.1.e) RGPD, in relation to article 160 of the Law 12/2009, of 10 July, on education and article 123. i) of the Barcelona Municipal Charter.

Barcelona, May 17, 2018

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