Ref.: CNS 41/2018

Opinion on the query made by a company managing municipal public services in relation to the transmission of certain information from its workers to the works committee.

A municipal services management company dedicated to the selective collection of waste and the management of rubbish dumps, requests the opinion of the Authority in relation to the possibility of handing certain documentation related to its workers to the works committee.

Specifically, according to the same letter, the delivery of the following documentation to the Works Council is considered:

- Basic copy of the new employment contracts of the month.
- Copy of the communication to contrat@ of the new employment contracts of the month.
- TC2 monthly.
- Monthly list of workers (with name and professional category) who are in situation of transitory incapacity (IT) due to an occupational accident.
- List of monthly overtime hours per employee (with name and professional category).
- Copy of sanction or reprimand letters given to workers.

Having analyzed the query, which is not accompanied by any other documentation, and in accordance with the report of the Legal Adviser, I issue the following opinion:

I

(...)

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), applicable from on 25 May 2018 (article 99), in the same line as Organic Law 15/1999, of 13 December, on the protection of personal data (hereinafter, LOPD), and the Implementing Regulation (hereinafter RLOPD), defines personal data as "any information about an identified or identifiable natural person ("the interested party"); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person;

"

The information that may be contained in the documents to be provided to the Works Committee that allows the direct or indirect identification of the workers must be treated in accordance with the regulations for the protection of personal data.

Article 4.2 RGPD defines the treatment "any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction". More extensive definition, but in the same line of article 3.c) of the current LOPD.

Article 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 (transmission of the workers' personal information to the works committee) to be legal, one of the conditions provided for in Article 6 RGPD must be met and Article 9 RGPD must also be taken into account, in the case that these are special categories of data.

Article 6.1 RGPD provides that it is necessary to have a legal 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 compliance with a legal obligation applicable to the controller" (letter c), 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 refers to the range of the standard necessary to establish these limitations:

"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."

In accordance with the above, and assuming that the consent of the data holders (affected workers) is not available, it is necessary to see if there is a legal basis (law) that enables the person in charge of the treatment, to transmit to the Committee of company the personal information of the workers subject to consultation.

Thus, bearing in mind that the addressee of the information is the company committee (employee representative body), it is necessary to see the provisions contained in the revised text of the Workers' Statute Law (ET), approved by the Royal legislative decree 2/2015, of October 23, applicable specific regulatory framework and assess whether this Law would enable the intended communication of data in the various cases raised.

III

The Workers' Statute attributes to the company committee, as a collegiate body representative of all the company's workers (article 63.1 ET), certain functions for the exercise of which it recognizes the right to access certain information, which could include personal data of workers.

Article 64.1 ET provides that: "The company committee will have the right to be informed and consulted by the employer on those issues that may affect the workers, as well as on the situation of the company and the evolution of employment in it, in the terms provided for in this article." Adding that information is understood as "the transmission of data by the employer to the works council, so that it is aware of a certain issue and can proceed to its examination." (....)

Sections 2 to 5 below contain specific forecasts in relation to the issues or matters on which works councils have the right to receive information, some of them quarterly (art. 64.2 ET), others annual (art. 64.3 ET) and others when appropriate (art. 64.4 and 5 ET).

Section 7, under the title "Rights of information and consultation and competences" attributes to the works committee, among others, the function "1 On matters of Social Security and employment, as well as the rest of the agreements, conditions and usages of the company in force, formulating, as the case may be, the appropriate legal actions before the employer and the competent bodies or courts."

Placed in this context, it will be necessary to analyze the nature of the personal data that may be contained in the documents that are intended to be provided, and to assess to what extent the obtaining of the

requested information is relevant to the exercise of the monitoring and control function of the labor regulations and the agreed pacts that article 67.4 ET attributes to the works committee.

On the other hand, it is necessary to take into account the provisions of another legal basis that could enable the treatment.

Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter Law 19/2014) aims, among others, to "regulate and guarantee the transparency of public activity ", as well as “regulate and guarantee people's right of access to public information and documentation” (Article 1 of Law 19/2014).

Article 3.1.b) of this Law includes in its scope of application, among others, commercial companies in which one of the public entities referred to in the same article has a majority stake, among which of note, so we are now interested in the local bodies of Catalonia.

According to information available on the web (...) it is established with the aim of offering the direct provision of services linked to waste management and the General Meeting of Shareholders is formed by the Plenary Council of the Consortium for waste management the entity It is therefore a mercantile company with public capital linked to this local body.

At the same time, Law 19/2013, of December 9, on transparency, access to information and good governance, also applies to local commercial companies with majority participation by local bodies (art. 2.1.g)) .

Article 18 of Law 19/2014 establishes that "people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any legal entity constituted" (section 1). The mentioned article 2.b) defines "public information" as "the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including the which are supplied by the other obliged subjects in accordance with the provisions of this law”.

Law 19/2014 qualifies as public administration the instrumental bodies of the public sector referred to in article 3.1.b) (art. 2.f)), as would be the case of the company formulating the consultation.

Taking into account the subjection of this type of society to transparency legislation, the information they have as a result of the public service they perform must be considered "public information" and is, therefore, subject to the access regime provided for in Law 19/2014.

Now, in accordance with the second section of the first additional provision of Law 19/2014, "Access to public information in matters that have established a special access regime is regulated by their specific regulations and , with a supplementary character, by this law."

Given that in this case, the workers' representatives have, as we have seen, a specific right of access to information provided for in article 64 of the Workers' Statute, it is this rule that must be applied priority, without prejudice to the supplementary application of the access regime provided for in the transparency legislation.

Having made this precision, and before starting to analyze each of the documents that are requested, it must be taken into account that the RGPD gives a letter of nature to the principle of data minimization, and it is included in article 5.1.c), according to which the data to be treated must be adequate, relevant and limited in relation to the purpose for which they are treated. In short, as already foreseen by the LOPD, the requirement remains that the data are only processed to the extent that they are essential for the fulfillment of the intended purpose.

In this sense and as a general criterion, it should be borne in mind that if the purpose pursued is also achieved by providing the information in an anonymized manner, this is the first measure to be taken into account in accordance with the principle of minimization in the treatment of personal data.

IV

First.- Basic copy of the new employment contracts

The delivery of a basic copy of the contracts to the workers' representative bodies is provided for in article 8.4 of the ET:

> "The employer will deliver to the legal representation of the workers a basic copy of all the contracts that must be concluded in writing, with the exception of the special employment relationship contracts of high management on which the duty of notification to the legal representation of the workers
>
> In order to verify the adequacy of the content of the contract to the current legality, this basic copy will contain all the data of the contract with the exception of the number of the national identity document or the alien identity number, the domicile, the civil status, and anyone else that, in accordance with Organic Law 1/1982, of May 5 (RCL 1982, 1197), on civil protection of the right to honor, personal and family privacy and one's image, could affect personal privacy . The treatment of the information provided will be subject to the principles and guarantees provided for in the applicable regulations on data protection.
>
> The basic copy will be delivered by the employer, no later than ten days from the formalization of the contract, to the legal representatives of the workers, who will sign it to certify that delivery has taken place.
>
> (...) "

In accordance with this precept, and for the purposes of being able to verify the suitability of the content of the contract to current law, the employer must deliver to the workers' representation the basic copy of all the contracts concluded with the sole exception of senior management contracts, on which there is only the notification obligation.

Likewise, article 64.4 in fine of the ET establishes that "... the company committee will have the right to receive the basic copy of the contracts as well as the notification of the extensions and

of the complaints corresponding to them within ten days following the date they took place."

The ET therefore requires that the employer deliver to the legal representatives of the workers a basic copy of all contracts concluded in writing, with the exception of those that are subject to the special employment relationship of senior management, of in accordance with article 2.1.a) ET and Royal Decree 1382/1985, of August 1, which regulates the special employment relationship of senior management personnel. For this type of contract, the ET only obliges the company to communicate its existence.

Article 1.2 of RD 1382/1985 considers senior management personnel "those workers who exercise powers inherent in the legal ownership of the Company, and relative to its general objectives, with autonomy and full responsibility only limited by the criteria and direct instructions emanating from the person or from the higher governing and administrative bodies of the Entity that respectively holds that ownership"

In accordance with article 8.4 ET, access to these documents will depend on the employment relationship these workers maintain with the company. If any of these people is linked to the company through a senior management contract, it must be understood that the exclusion of the rule is explicit enough to understand that there would be no authorization for the communication of data contained in the contracts of 'this type, and therefore, the delivery of the copy of these documents would require the consent of the person or persons affected.

On the other hand, for those workers subject to the general regime, the company would be obliged to deliver the copies of the written contracts signed in order to check their adequacy to the current legality, in the terms provided for in article 8.4 ET.

In this sense, the same precept provides for the elimination of personal data contained in the contract such as the DNI or NIE number, address, marital status, and we could add any other data (such as the signature) that would be unnecessary and excessive for the fulfillment of the current legal surveillance purpose attributed to the workers' representatives. It will also be necessary to exclude any data that may affect the worker's personal privacy. To this end, it should be remembered that, as stated by the Constitutional Court, access to the remuneration information that may be contained in the contract does not infringe the right to privacy of the workers (STC 142/1993).

With respect to senior management contracts, although there is no obligation to deliver a copy of the contract, it is necessary to take into account that Law 19/2014 obliges the Public Administration (a concept in which the majority of participating companies are included or linked to public bodies), (art. 2.fi art. 3.1.b) of Law 19/2014), to publish certain information in relation to staff remuneration.

Thus, article 11.1 of Law 19/2014 provides that they must be made public:

> "b) Remuneration, compensation and per diems, the activities and assets of the members of the Government, of the senior positions of the Public Administration and of the management staff of public bodies, companies, foundations and consortia, and the compensations that have to be perceived when ceasing to exercise the position.

(...)

e) The general information on the remuneration, compensation and per diems received by public employees, grouped according to the levels and bodies."

In accordance with this precept, and with regard to the management staff of the consulting entity, information on the remuneration received should be published individually, and would cover the full amount for any type of remuneration, compensation or allowance. This provision would affect, at least, each of the members of the Board of Directors (the company's management body). According to the text of the Law, remuneration should be expressed individually for each position and for any remuneration concept.

From the point of view of the right to data protection regarding this information that must be published by express provision of Law 19/2014, there can be no doubt about the possibility of handing it over to the works committee in these terms .

This Authority has had the opportunity to analyze several requests for access to the remuneration information of personnel linked to other entities subject to Law 19/2014, in the context of claims files submitted to the GAIP and available on the website of the authority (IAI 9/2016 and IAI 19/2016, among others).

In this sense, and in accordance with the criterion maintained by the Authority, in relation to access to remuneration information of workers who are not part of the highest management bodies of the respective entities that are obliged by Law 19/2014, it should be noted that if there is always the possibility of indirectly relating the remuneration information associated with a job to the person who occupies it, providing this information in such a way as to directly identify the affected persons is a more intrusive measure for to the protection of personal data, which only seems justified in certain cases where the characteristics of the workplace justify it.

This forces us to distinguish between two situations:

a) On the one hand, the personnel who occupy positions of trust or special responsibility within the organization, are linked to the company by a senior management contract or of another type. Although in these cases the law does not provide for the publication of their remuneration on the Transparency Portal, with regard to requests for access to information, in principle the considerations made regarding to the management staff, given that due to the uniqueness of the positions and also due to the level of remuneration they usually bring associated, the knowledge of their remuneration may be relevant for the control of the use of public resources. It would be justified in this case to provide individualized information about the sites, even identifying the people affected.

b) On the other hand, with regard to the rest of the staff in which these circumstances do not occur, in principle, given that these are positions with a lower level of responsibility, and consequently with a lower level of remuneration, the evaluation of the use of public resources could be done without the need to identify the people affected.

Taking this criterion into account, the transparency legislation would enable any citizen, through the exercise of the right of access, to transfer the remuneration data of people who occupy positions of trust or special responsibility within the company within the organization, and are linked to the company by a senior management contract or of another type. If this information would be accessible to any citizen, all the more reason it must be known by the Works Council, the representative body of the workers that acts in defense of their rights and interests.

Thus, Law 19/2014 would enable access to the remuneration data of those people who are part of the board of directors and those who, despite not being part of this board, occupy positions of trust or responsibility, are bound by a senior management contract or of another type.

Therefore, regardless of the fact that the ET does not enable the delivery of the copy of the senior management contracts, the supplementary application of the Transparency Law would allow the access of the works committee to the remuneration data of the related persons with the company with a senior management contract.

v

~~Second.- Copy of the communication contract@ of the new employment contracts of the more.~~

The communication of online recruitment through the Contrat@ application of the Public Employment Service allows employers acting in their own name and companies and registered professionals acting on behalf of third parties to communicate the content of the recruitment employment at public employment services from your own office or professional office.

In accordance with article 8.3 ET "The employer is obliged to communicate to the public employment office, within ten days following their agreement and in the terms that are determined by law, **the content of the employment contracts** that celebrates or the extensions thereof, must or not be formalized in writing."

Also, section 4 of this same precept obliges the employer, as we have seen, to deliver to the legal representatives of the workers, within a period not exceeding ten days from its formalization, the basic copy of the contract, which must be signed by the representative to certify that the delivery has taken place. This basic copy is then sent to the employment office.

Royal Decree 1424/2002, of December 27, which regulates the communication of the content of employment contracts and their basic copies to the Public Employment Service, and the use of electronic media, in line with the article 8.3 and 8.4 in fine ET, provides in article 1:

> "1. **Employers are obliged to communicate to the Public Employment Services, within ten working days following their consultation, the content of the employment contracts** they hold or their extensions, whether or not they must be formalized in writing.

2. Employers must send or forward to the Public Employment Services **the** basic copy of the employment contracts, previously given to the legal representation of the workers, if any."

Regarding the content of the communications, article 3 of this rule provides:

"1. The communications of the content of the employment contracts or their extensions referred to in the previous article will contain the data defined as mandatory by the Ministry of Labor and Social Affairs.

2. Such data will refer to the identification of the worker, of the company, to the specific requirements of each contractual modality, of the transformations or conversions of temporary to indefinite employment contracts, of the calls of intermittent permanent workers and of the additional hours pacts in indefinite part-time contracts, as well as the data of the certifications issued by the public administration or entity responsible for managing the training of workers replaced during said periods by unemployed workers beneficiaries of unemployment benefits and those of the communications that are legally or by regulation established according to the provisions of their respective regulatory regulations."

To this end, Order ESS/1727/2013, of September 17, which modifies Order TAS/770/2003, of March 14, which implements Royal Decree 1424/2002, of 27 of December, provides in Annex I, the list of mandatory data to be communicated to the public employment services, distinguishes, among the company's data, the worker's data (NIF, first and last name, date of birth, sex , nationality, country and municipality of residence).

Section 2 of this annex lists the mandatory data for the communication of all contracts, distinguishing first those common to all of them, and then those that correspond according to modality and other characteristics of the contract.

The specific regulations do not provide for access by the representative bodies to the content of the communications of the new contracts to the Public Employment Service. In this sense, article 5 of RD 1424/2002, of December 27, relating to the information rights of workers and their legal representatives, provides:

" 1. The workers may at any time request from the Public Employment Services information on the content of the communications referred to in articles 1 and 3 in which they are a party.

2. The information relating to the data of the employment contracts from the basic copies thereof, to which reference is made in section 2 of the previous article, will be available to the legal representatives of the workers, through the bodies of institutional participation of the same in the corresponding Public Employment Services."

Thus, while it is foreseen that the worker may request from the Public Employment Service the information on the content of the communications made by the company and referred to the employment contract itself, the works committee could only access the basic copy of the contract sent by the company.

Even so, it cannot be ruled out that it may be relevant for the works committee, for the purposes of fulfilling its monitoring functions in compliance with labor regulations, to have the information that certifies that the employer has complied with the obligation to notify the Public Employment Service of the new contract in the terms provided for in article 8.3 ET.

Given the mandatory content of the data that must be entered in these communications (Annex I of Order ESS/1727/2013), the worker's personal information that may be included does not seem to differ from the data that would already appear in the basic copy of the contract and which must be delivered to the works committee. To the extent that the personal data transmitted in the communication are the same as those contained in the basic copy of the contract delivered to the Works Council, the transmission of this information would not imply a greater intrusion into the privacy of the worker than the one that involves accessing the basic copy and that the data controller (the company) is obliged to deliver. If this is the case, and as long as those personal data other than the worker's first and last name that may appear on the communication sheet (for example ID number, address, etc.) and any other information that is unnecessary and excessive, as must be done with the basic copy of the contract, it does not seem that the data protection regulations can pose a limitation in this
case

VI

Third.- Document TC2 of monthly Social Security contribution bases.

The TC-2 document, contribution slip for the settlement and payment of contributions for the different Social Security schemes, or the Nominal Workers' List (RNT) that replaces it with the implementation of the new system of direct settlement of contributions to the Social security, in addition to containing the nominal relationship of the workers (abbreviation of the workers' first and last names, ID and social security number), includes the contribution data (occupation, number of days or hours, base key of contribution and the amount of these bases), but also informs about special situations of workers who are entitled to some deduction or compensation.

These deductions and compensations may refer to common illnesses or non-occupational accidents, among other issues. Information that can lead us to know, even indirectly, workers' health data (disability or occupational health situations) and as such are specially protected data, included in what the RGPD calls "special categories of data

Article 9.1 RGPD establishes:

> "The processing of data that reveals ethnic or racial origin, political opinions, religious or philosophical convictions, or trade union affiliation is prohibited, and the processing of genetic data, biometric data aimed at unambiguously identifying a natural person, data relating to the health or data relating to the sexual life or sexual orientation of a natural person."

It establishes, in general, the prohibition of treatments that reveal personal data of this type, except in the specific situations provided for in the same

Regulation Section 2 of article 9 RGPD lists the circumstances that, if they occur, would allow this treatment, establishing a "numerus clausus" of treatment possibilities.

Article 64.2 c) of the ET recognizes a right for the workers' representatives to receive information on the absenteeism rate and the causes, work accidents and occupational diseases or the accident rate, among others. However, the cited article makes it clear that this information must be communicated in the form of statistics, therefore, without identifying specific workers. It follows from this that the communication, with identification of the workers, of this type of information contained in document TC-2, would contravene the provisions of the ET itself.

Law 19/2014, of supplementary application, is also clear regarding access to health data and other deserving of special protection, by limiting access to this data unless the express consent of those affected in the time of formulating the access request. Thus, in accordance with article 23 LTC:: "requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology , trade union membership, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, except that the person affected expressly consents to it by means of a written document that must accompany the request."

For its part, article 15.1 of Law 19/2013 establishes that "(...) If the information includes specially protected data referred to in section 3 of article 7 of Organic Law 15/1999, of December 13, or data relating to the commission of criminal or administrative offenses that did not entail a public reprimand to the offender, access may only be authorized if the express consent of the affected person is obtained or if the latter is protected by a law with the rank of Ley."

With regard to the remuneration data contained in the quotation bulletin, it should be borne in mind that articles 8.4 and 64.4 ET provide, as we have seen, for access by the workers' representatives to the basic copy of the contract, which means that they can have the information of a retributive nature contained in the contract.
Beyond that, there is no other specific legal provision that authorizes the works committee to access the workers' remuneration data.

On the other hand, in accordance with Law 19/2014, on transparency, access to information on remuneration could be given according to the terms set out in the legal basis IV to which we refer.

Beyond that, and in the absence of specific reasons that the Works Council can adduce that justify access to the nominal list of workers contained in document TC-2, and, bearing in mind that the purpose should frame - within the functions of monitoring and complying with the rules in force in labor matters, social security and employment, it does not seem that access to the remuneration information contained in this quotation bulletin can be justified for this purpose, which we understand that it would in any case be excessive and contrary to the principle of data minimization (article 5.1.c) RGPD).

However, the possibility of giving information to the works committee about the nominal number of workers for whom the company has contributed should not be ruled out. Considering that

the works committee must have the basic copy of the contracts, with the first and last names of the workers, access to this information would not imply a greater interference with their privacy.

VII

fourth Monthly list of workers (with name and professional category) who are in an IT situation due to an occupational accident.

Article 64.2.d) of the ET provides that the works committee will have the right to be informed quarterly: "Of the statistics on the absenteeism index and the causes, the accidents of work and professional illnesses and their consequences, the accident rates, the periodic or special studies of the working environment and the prevention mechanisms that are used."

Also, section 64.7.2º ET, attributes to the company committee the functions of "Monitoring and controlling the safety and health conditions in the development of work in the company, with the particularities provided for in this order by the article 19."

Section 5 of article 19 ET provides: **"Prevention delegates and, failing that, the legal representatives of workers in the workplace,** who appreciate a serious and serious probability of an accident due to non-observance of the legislation applicable in the matter, they will require the employer in writing to adopt the appropriate measures to make the state of risk disappear; if the request is not answered within four days, they will go to the competent authority; this, if it appreciates the alleged circumstances, by means of a well-founded resolution, will require the employer to adopt the appropriate security measures or to suspend its activities in the area or workplace or with the material in danger. It will also be able to order, with the precise technical reports, the immediate stoppage of work if it is estimated that there is a serious risk of accident."

Law 31/1995, of November 8, on the prevention of occupational risks, provides for the participation of workers, through the most representative trade unions, in the elaboration of the policy on the prevention of occupational risks (see arts. 5.1. b), and 12 of Law 31/1995). Article 34.2 of the aforementioned law provides that:

> "It corresponds to the Company Committees, the Personnel Delegates and the union representatives, in the terms that, respectively, are recognized by the Workers' Statute, the Law on Personnel Representation Bodies in the Service of Public Administrations and the Ley Orgánica de Libertad Syndical, the defense of the interests of workers in matters of risk prevention at work. For this, the staff representatives will exercise the powers established by said rules in matters of information, consultation and negotiation, surveillance and control and exercise of actions before the companies and the competent bodies and courts.

In accordance with the aforementioned regulations, workers' representatives must receive periodic information on occupational accidents, but as provided by the ET, what must be given to workers' representatives are statistics, and therefore, without reference -se to specific workers, so it is not included in the access regime for the representatives of the

workers, forecasts regarding the communication of the data of workers who are in a situation of temporary incapacity due to an occupational accident.

The transparency legislation, of supplementary application in this case, limits access to data relating to health, unless the express and written consent of the affected person, which must accompany the request, is obtained. (article 23 LTC). Therefore, unless the express and written consent of those affected is available, their access to information will need to be limited in the terms set out in the consultation.

Point out in this regard, that information related to workers' health data is deserving of special protection, included in article 9 RGPD within the special categories of data. As explained in the previous legal basis, the RGPD generally provides for the prohibition of treatments that reveal personal data of this type except in the specific situations provided for in the same regulation, without that in this case none of these situations occur.

VIII

fifth List of monthly overtime hours per employee (with name and professional category)

Article 64.1 ET recognizes the right of the works committee to be informed and consulted by the employer on those issues that may affect the workers, as well as on the situation of the company and the evolution of employment. Beyond this, there are no specific forecasts regarding any individualized communication linked to each worker about the overtime hours worked.

Therefore, it does not seem that there is sufficient legal authorization based on the regulations for, in general, the company to communicate to the works committee the list with information on the number of overtime hours worked in the terms it proposes the consultation (with the identification of the workers), unless the prior consent of those affected is available (article 6.1 RGPD).

Despite this, it is necessary to analyze whether, through the exercise of the right of access to public information recognized in the transparency legislation (of supplementary application in this case), there would be legal authorization to send said information to the works council , and in this sense, it must be borne in mind that when the public information that is sought to be accessed contains personal data, the limits provided for in articles 21, 23 and 24 of the same Law must be taken into account.

Thus, taking into account that the remuneration information of the workers does not have the given consideration specially protected (article 23 LTC), it would be necessary to apply article 24.2 LTC, according to which:

> "2. If it is other information that contains personal data not included in article 23 (specially protected data), access to the information can be given, with the **previous reasoned weighting of the public interest in the disclosure and the rights of the affected people** To carry out this weighting, the following circumstances must be taken into account, among others: a) The elapsed time.

b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered. c) The fact that it is data relating to minors. d) The fact that it may affect the safety of people. (...).”

When making this weighting between the different rights and interests at stake, it must be taken into account that the recipient of the information is the workers' representative body, to whom the specific regulations expressly attribute the functions of monitoring compliance with the current regulations in labor matters and the rest of the agreements and conditions that may have been established (art. 64.7 ET).

In the exercise of these surveillance functions, it could be necessary to have an individualized list of overtime hours worked by the workers. This would allow the workers' representative body to check the correct allocation of hours in accordance with the criteria set out in article 35 ET, in the collective agreement in force or in the respective labor contracts. However, this purpose can also be achieved without sacrificing the privacy of the affected workers.

It must be taken into account that the disclosure of information on the income of a natural person facilitates the obtaining of an economic profile of the affected person which may end up causing him harm both in the professional field and in front of 'financial institutions, social etc.
While it is true that in this case the remuneration information would only refer to one of the salary supplements (overtime), the truth is that the works council can have the basic copy of the contract and therefore know the salary and other agreed remuneration supplements.

The principle of data minimization (Article 5.1.c) RGPD) requires that only data that are adequate, relevant and limited in relation to the purpose for which they are processed are processed.

In order to respect this principle, a monthly list could be provided with the overtime hours worked by each worker, replacing their first and last names with a numerical code assigned to each of them, in such a way that it would be possible to see and control the distribution of these hours among the collective of workers grouped by professional categories.

This replacement of the first and last name by an unidentifiable code would mean what is known in terms of the new RGPD as “pseudonymization”: “the treatment of personal data in such a way that they can no longer be attributed to an interested party without using additional information, provided that said additional information appears separately and is subject to technical and organizational measures aimed at ensuring that personal data is not attributed to an identified or identifiable natural person;” (article 4.5 RGPD).

For this purpose, the code should be kept in every communication made in this regard to the works committee, for the purposes of being able to see the accumulation of monthly overtime assigned to each of them, but it would be necessary that it is only used to monitor the performance of overtime, and not for any other information other than this specific treatment.

If it were an internal identification code for each worker used in general for all the actions carried out in the worker's field of work, it would be easy for the crossing of various data that could be obtained by the works committee, their identification possible and would end up having the same result as identifying workers with their ID number.

In order for these codes to be effective from a data protection perspective, it is necessary to ensure that the identity of the worker is known only to the person who attributes the code, so that the worker is not identifiable by any other person, among others , by the representatives of the workers who will receive this information.

Having weighed the rights and interests at stake, it is considered that the option of providing a list of overtime together with a numerical code in place of the workers' first and last names would be the most suitable, in order to find in this case the fair balance between the right to the protection of personal data of the affected workers (article 18.4 CE) and the right of access to public information of the works committee (article 18 Law 19/2014). With this solution, the works council's right of access could be satisfied without undermining the right to the protection of workers' personal data. Therefore, whenever possible, it should be done this way.

Having said that, the truth is that it cannot be ruled out that, in the exercise of this function of control and surveillance in the allocation of hours or extraordinary work, at a given moment it may end up being necessary to have the identification of a specific worker . This would be the case, for example, in the event that, after comparing the different lists that the company would have been providing to the committee on a monthly basis, it would detect certain anomalous or irregular situations in relation to the allocation of overtime among the different workers.

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sixth Copy of sanction or reprimand letters given to workers

Article 64.4. ET foresees that the works council, with the periodicity that proceeds in each case, has the right to "c) Be informed of todas las ciones impuestas por faltas muy graves."

This precept contemplates a specific qualification for the communication to the representatives of the workers of all the sanctions imposed for very serious offences. In these cases, the legislator has considered this access in particular necessary, which would enable the communication to the representatives of the workers, without the consent of the people affected, of the sanctions imposed for very serious offences.

Beyond that, in the framework of disciplinary dismissal, article 54 of the ET provides that the contract can be terminated by decision of the employer, through dismissal based on a serious and culpable breach of the worker, and includes a closed list of cases that can be considered contractual breaches. Article 55 of the ET, regarding the form and effects of disciplinary dismissal, provides that:

"1. The dismissal must be notified in writing to the employee, stating the facts that motivate it and the date on which it will take effect.

Other formal requirements for dismissal may be established by collective agreement.

When the trabajador was a legal representative of the trabajadores or union representative, the opening of adversarial proceedings will proceed, in which, in addition to the interested party, the remaining members of the representation to which he belonged, if any, will be heard.

If the worker is affiliated to a union and the employer is constare, he must give a preliminary hearing to the union representatives of the Trade Union Section corresponding to that union.

2. (...)."

The ET foresees very specific cases in which a hearing is given or certain circumstances of a process of disciplinary dismissal of a worker are communicated, such as the case that this worker is a representative of the workers, or that he is affiliated to a union. In these cases, it is appropriate to hear or give a preliminary hearing to certain trade union representatives, always under the terms of the mentioned article 55 of the ET.

Recital 41 of the RGPD, according to which the range of the rule that serves as a basis for the treatment must be determined in accordance with the constitutional order of each Member State (in the Spanish case, Article 53 EC would require that was a norm with the status of law, as the Constitutional Court has recalled for example in STC 292/2000), and furthermore, it must be clear and precise and its application must be predictable for its recipients, in accordance with the jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights.

In this case, insofar as the authorization is limited to those sanctions imposed by the commission of very serious offenses (art. 64.4. c) ET) and to disciplinary dismissals initiated against workers' representatives or members of a union, the rules would be proportional to the purpose pursued.

On the other hand, and given the supplementary application of the transparency legislation, it should be taken into account that article 23 LTC excludes from the right of access the data relating to the commission of criminal or administrative offenses, unless it is provided of the express consent of those affected.

Article 15.1 of Law 19/2013 establishes that access to this type of data can only be authorized if the express consent of the affected person is obtained or if it is protected by a rule with the rank of Law.

Along these lines, 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, Congress of Deputies Series A Núm. 13-1 of November 24, 2017, which is currently being processed, regulates in article 27 the processing of data relating to infringements and administrative sanctions, and provides:

1. Pursuant to Article 86 of Regulation (EU) 2016/679, the processing of data related to administrative infractions and sanctions, including the maintenance of records related to them, will require:

a) That those responsible for said treatments are the competent bodies for the instruction of the sanctioning procedure, for the declaration of the infractions or the imposition of the sanctions.
b) That the treatment is limited to the data strictly necessary for the purpose pursued by it.

2. When any of the conditions provided for in the previous section are not met, the data treatments referred to infractions and administrative sanctions must be authorized by a law, which will regulate, as the case may be, additional guarantees for the rights and liberties of those affected."

From all this, it can be concluded that, beyond the specific cases provided for in article 55 ET regarding the representatives of the workers or the members of a trade union, only the communication of this information would be in accordance with the data protection regulations individually, indicating the name and surname of the sanctioned worker, and the sanction imposed in the case of a very serious offense (specific case provided for in article 64.4. c) ET). In all other cases, the information can only be provided anonymously.

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Finally, it should be noted that article 5.1. f) RGPD, includes among the principles that all processing must comply with the obligation that personal data be processed in such a way as to guarantee adequate security, including protection against unauthorized or illegal processing and against its accidental loss, destruction or damage through the application of appropriate technical or organizational measures ("integrity and confidentiality").

In this line, the representatives of the workers must observe professional secrecy in accordance with article 65.2 of the ET:

"2. The members of the company committee, and the committee as a whole, as well as, where applicable, the experts who assist them, must observe the duty of secrecy with respect to that information which, in the legitimate interest and objective of the company or work centre, has been expressly communicated to them in a confidential manner.

3. In any case, no type of document delivered by the company to the committee can be used outside the strict scope of the company and for purposes other than those that motivated its delivery.

The duty of secrecy subsists even after their mandate expires and regardless of where they are."

Conclusions

The data protection regulations would not prevent the access of the works committee to the basic copy of the contract or the communication to the Public Employment Service through the contrat@ application (points one and two), as long as it is done in the terms set forth in grounds IV and V of this opinion.

Access to the list of monthly overtime hours worked by workers (point five) should be facilitated by replacing the first and last names of the workers with a numerical code that does not allow the identification of these people.

Access to the monthly TC-2 document or Nominal list of workers, (point three), should have the express consent of the workers. This, without prejudice to the fact that a relationship can be provided with the first and last names of the workers for whom the company has paid.

Access to the monthly list of workers who are in an IT situation due to an occupational accident (point four) cannot be provided without the express consent of those affected.

Access to penalty or reprimand letters for workers (point six) cannot be provided without the express consent of those affected, unless it concerns sanctions for the commission of very serious offences. Nevertheless, without prejudice to the fact that, both in this case and in the previous one, the information can be sent anonymously.

Barcelona, July 25, 2018