

CNS 49/2018

**Opinion in relation to the consultation of a consortium to determine the lawfulness of the processing of personal data in the framework of the Study of labor insertion carried out by an entity.**

A letter is presented to the Catalan Data Protection Authority (...) in which a query is raised in relation to the communication of data from university graduates to an entity to carry out surveys as part of the Study of 'employment insertion.

Analyzed the request, and the documentation that accompanies it, and seen the report of the Advisory Legally, the following is ruled

I

(...)

II

(...) raises in this consultation the possibility of processing certain data held by Catalan universities, both public and private and affiliated centers, of university graduates who have completed their university studies within three years of completing their studies degree (six years in the case of Medicine) and three and four years after completing master's and doctorate studies, as well as from a gender perspective, three years after completing studies and one, so punctually, twenty years after the end of university studies, to get in touch with those interested in order to carry out surveys within the labor insertion study. A model of the data requested by the entity from the universities is attached to the query.

Article 172.2.f of the Statute of Autonomy of Catalonia attributes to the Generalitat, in matters of university education, without prejudice to university autonomy, shared competence over the evaluation and guarantee of quality and the excellence of university education.

Law 1/2003, of 19 February, on the Universities of Catalonia (hereinafter Law 1/2003) defines the entity as the main instrument for the promotion and evaluation of the quality of Catalan universities (article 137 ).

Law 15/2015, of 21 July, of AQU Catalunya, states that it is a public law entity and is attached to the competent department for universities, currently the Department of Business and Knowledge through the Secretariat of Universities and Research.

Article 2.3 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector (hereafter LRJSP) establishes that any public bodies or entities of public law linked or dependent on public administrations. Therefore, AQU Catalunya is a public administration.

In accordance with this, the universities and AQU Catalunya have their own legal personality and, therefore, the communication of data between them would constitute a communication of data to third parties. Article 4.10 RGPD defines "third party" as "the natural or legal person, public authority, service or other body other than the interested party, the person responsible for the treatment, 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".

Thus, and from what emerges from the consultation, the communication of this data takes place between public administrations. From here, it is necessary to determine whether the data processing proposed by the entity would be lawful for the purposes of the provisions of the RGPD

### III

Article 5.1 a) RGPD establishes that all processing of personal data must be lawful, fair and transparent in relation to the interested party. In order for this treatment to be lawful, one of the legal bases of article 6.1 RGPD must be met, either the consent of the affected person, or any of the other circumstances provided for in the same article, such as that "the treatment it 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" (article 6.1 e)).

However, as can be seen from article 6.3 of the RGPD, the basis of the treatment indicated in article 6.1.e) must be established by European Union Law or by the law of the Member States that apply 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 referred to in article 6.3 of the RGPD requires, therefore, in the case of the Spanish State, that the development rule, to be treated of a fundamental right, has the status of law (Article 53 CE).

Law 1/2003, of February 19, on universities in Catalonia, establishes that the social council of the universities (body through which society participates in the university) in collaboration with AQU Catalunya "will contribute to the supervision, and the evaluation of the quality, performance and economic and social viability of the university" (article 88.d)) and must "ensure the correct employment of university graduates" (article 90. k)).

Article 4 of the Statutes of AQU Catalunya provides that AQU Catalunya, among others, has the following functions:

- k) The preparation of statistical information and indicators on higher education and university research in order to facilitate the analysis of their situation and evolution.
- l) The impetus for the generation of knowledge and the provision of public information that demonstrates the state of quality and the quality assessment processes of universities and higher education centers and the services they offer, to contribute to the retention of accounts in society".

Thus, in relation to the competences attributed to it regarding the evaluation and guarantee of the quality of university education, the orientation of studies in their incorporation into the world of work and the promotion of effective actions that favor employment insertion and graduates, AQU Catalunya must carry out the labor insertion study. To carry out the job placement study, it will carry out surveys in order to obtain data and references on the quality of the job placement of university graduates and develop, where appropriate, improvement plans.

Therefore, in principle, it seems that the job placement study to be carried out by AQU Catalunya has a statistical purpose.

Regarding the processing of data for statistical purposes, recital 162 of the RGPD makes it clear that:

"The present Regulation must be applied to the treatment of data for statistical purposes. The statistical content, the access control, the specifications for the processing of personal data for statistical purposes and the appropriate measures to safeguard the rights and freedoms of the interested parties and guarantee statistical confidentiality must be established, within the limits of this Regulation, by the Law of the Union or of the Member States. For statistical purposes is understood any operation of collection and processing of personal data necessary for statistical surveys or for the production of statistical results. These statistical results can also be used for different purposes, including scientific research purposes.

The statistical purpose implies that the result of the treatment for statistical purposes is not personal data, but aggregated data, and that this result or the personal data are not used to support measures or decisions relating to specific physical persons".

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, must be taken into consideration. Series A No. 13-3 of October 9, 2018, currently being processed. Specifically, article 25 refers to the processing of data in the field of the public statistical function and provides:

"1. The treatment of personal data carried out by the organizations that have been assigned the powers related to the exercise of the public statistical function will be subject to the provisions of its specific legislation, as well as in Regulation (EU) 2016/679 and in the this organic law.

2. The communication of the data to the competent bodies in statistical matters will only be understood covered by article 6.1 e) of the Regulation (EU) in cases where the statistics for which the information is required is required by a rule of law of the European Union or is included in the legally provided statistical programming instruments.

In accordance with what is provided in article 11.2 of Law 12/1989, of May 9, of the Public Statistics Function, they will be a strictly voluntary contribution and, consequently, they may only be collected with the express consent of those affected, the data in the which refer to articles 9 and 10 of Regulation (EU) 2016/679.

3. The competent bodies for the exercise of the public statistical function may deny the requests for exercise by those affected by the rights established in articles 15 to 22 of Regulation (EU) 2016/679 when the data are covered by the guarantees of statistical secrecy provided for in state or regional legislation."

In accordance with article 135.1 of the Statute of Autonomy of Catalonia, the Generalitat has exclusive jurisdiction over statistics of interest to the Generalitat, which in any case includes statistical planning, administrative organization and the creation of 'an official statistical system owned by the Generalitat (article 135.1).

Law 23/1998, of December 30, on the statistics of Catalonia (hereafter LEC), provides that statistics of interest to the Generalitat can be declared, among others, "the statistical activities carried out by the Institute of "statistics of Catalonia, the departments of the Generalitat, the entities under public law, the autonomous bodies and the companies that depend on them, and the managing entities of the Social Security of Catalonia" (article 4.a).

The same law adds that "it is mandatory to supply the information necessary to prepare the statistics of interest to the Generalitat" (article 34) and that the information requested to prepare these statistics must be fully satisfied and truthful, and must guarantee the protection of personal data within the framework of current legislation (article 36).

In this sense, Law 5/2016, of December 23, on the Statistical Plan of Catalonia 2017-2020 and amending Law 23/1998, on the statistics of Catalonia, provides that "the statistical actions included in an annual program of statistical action are declared statistics of interest to the Generalitat and are considered official statistics" (article 14.2) and contains an ordered description of areas, subareas and objectives of statistical activity of the Plan. In this case, the activity would be included in the field description: work and society (code 04) and the subfield: relationship with the activity (code 04 01).

Decree 191/2018, of August 28, which approves the Annual Statistical Action Program for 2018, details the relationship of statistical actions, in the terms established by Law 5/2016, of December 23 and includes, among others, the activity "Statistics on the employment of university graduates" which is described in the following terms:

"Statistics on the employment of university graduates

Scope: 04 Work and society

Subarea: 04 01 Relationship with the activity

Code: 04 01 15

type new

Responsible body: Institute of Statistics of Catalonia, Agency for the Quality of the University System of Catalonia.

Collaborating organization:-

Estimated direct cost: -

Review: Feasibility study for the comparative evaluation of job placement results from the AQU's 2017 Job Placement Survey with other administrative and statistical information, with the aim of being able to estimate employment rates the years that the Survey is not carried out given its triennial nature. The promotion analyzed will correspond to that of 2013 for undergraduates, and 2012 and 2013 for masters and doctorates. It is essential to use promotional records and administrative records, with the UNEIX file, the Register of affiliates and affiliations to the Social Security, the Database of claimants registered in the SOC and the labor recruitment file registered in public services of employment

(...)

It follows from these forecasts that the statistical performance of the insertion of university graduates is planned within the Annual Program of statistical performance for the year 2018 in compliance with the Statistical Plan of Catalonia 2017-2020, therefore, statistics of interest of the Generalitat and is considered an official statistic.

In this case, the legal basis that would enable the processing of this data by AQU Catalunya, would be based on article 6.1.e) of the RGPD ("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"), in relation to the purpose of preparing the statistical activity of the employment of university graduates provided for in Decree 191/2918, cited, which it is part of a statistical activity included in Law 5/2016, cited.

On the other hand, it must be taken into account that article 89.1 RGPD, when it is intended to carry out a treatment for statistical purposes, requires that it meet certain guarantees:

"1. The treatment for archival purposes in public interest, scientific or historical research purposes or statistical purposes will be subject to adequate guarantees, according to this Regulation, for the rights and liberties of the interested parties. These guarantees will require that technical and organizational measures are available, in particular to guarantee respect for the principle of minimization of personal data. Such measures may influence pseudonymization, as long as these goals can be achieved in that way. As long as those goals can be achieved through further processing that does not allow or no longer allows the identification of the interested parties, those goals will be achieved in that way".

In accordance with the principle of minimization, "personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (data minimization)". According to this principle, they would only request those data that are essential to carry out the job placement survey. In this case, once the structure of the file attached to the query has been analysed, the data to be processed are only identification data and academic data. Therefore, it would seem that they are appropriate, relevant and essential to determine the identity and academic profile of the person in question and to contact them in order to carry out the survey.

It is also necessary to take into account Law 23/1998, of December 30, on Statistics of Catalonia, which provides that all individualized data of a private, personal, family, economic or financial nature, used to prepare this statistical study, obtained both directly from the reporting person as from administrative sources, are protected by statistical secrecy (article 24 LEC). Thus, all the people, bodies and institutions that intervene in the study of labor insertion have the obligation to keep the statistical secrecy about the statistical information and this duty must be maintained even after the persons obliged to preserve it have ended their professional activities or their connection with the bodies that make or have statistics (article 25 et seq. of the LEC).

On the other hand, it is planned to communicate the data to the UNEIX file and to IDESCAT. Regarding the UNEIX file, it is a file of the Department of Economy and Knowledge of the Generalitat de Catalunya, which has a purely statistical purpose. On the other hand, communication to IDESCAT is also planned for statistical purposes. In this second case, it is expressly indicated that only the aggregated data will be communicated. In the first case, however, it is indicated that the structure of the will be communicated to UNEIX

file and study results. Considering that this is a communication for statistical purposes, it would not seem justified to communicate the specific personal data of the participants. For this reason, it would be good if in the first case it was also clear that the data that will be communicated to UNEIX will also be aggregated and that they will not allow the identification of specific people.

With regard to the conservation of the data, in the attached documentation it is planned to return to the participating universities the files with the data that they have communicated once the statistical action that justifies the collection has been carried out. It seems to follow from this that the processing of the data will be limited to the minimum time necessary to carry out the statistical activity and that a copy of the original data will not be kept, allowing the survey result to be linked to people determined

Finally, within the framework of the right to information provided for by the data protection regulations, it should be remembered that at the time of conducting the survey, the interested parties must have been informed of the different aspects referred to in the article 13 RGPD in addition to the categories and the origin of the data used to select and contact them. In this regard, it may be of interest to consult the Guide for the fulfillment of the duty to inform the RGP ([http://apdcat.gencat.cat/ca/documentacio/RGPD/altres\\_documents\\_dinteres/](http://apdcat.gencat.cat/ca/documentacio/RGPD/altres_documents_dinteres/)).

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## **Conclusions**

From the information provided with the consultation, it can be considered that there is sufficient authorization under article 6.1.e) of the RGPD for the processing of the data of university graduates by AQU Catalunya, to carry out a statistical activity of interest to the Generalitat, in accordance with Law 23/1998, of December 30, on the statistics of Catalonia, and in the terms expressed in the Statistical Plan.

Barcelona, October 22, 2018