

CNS 53/2018

Opinion in relation to the query raised in relation to the processing of researchers' data in the Catalan Research Portal

A query is presented to the Catalan Data Protection Authority regarding the treatment of the data of the researchers of the Catalan universities, specifically, through the Portal de la Recerca de Catalunya, taking into account the provisions of the Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data and which repeals the Directive 95/46/EC (hereinafter, RGPD).

Analyzed the request, which is accompanied, among others, by a copy of several reports on the processing of personal data in the Portal de la Recerca de Catalunya, given the current applicable regulations, and the report of the Legal Advice, the following is ruled.

I

(...)

II

The query asks about the treatment of the data of researchers from Catalan universities in the Portal de la Recerca de Catalunya, given the novelties introduced by Regulation (EU) 2016/679, general protection of personal data (RGPD), in full application since May 25, 2018.

(...).

According to the query, in fulfillment of its functions, the Consorci de Serveis Universitaris de Catalunya (CSUC) manages the Portal de la Recerca de Catalunya (www.portalrecerca.csuc.cat), which allows queries to be made by institution, departments or other structures of research, by research projects and groups, by researcher, by publications and by theses.

The consultation adds that on November 2, 2017, the Commission formed by the research vice-chancellors of the member universities of the CSUC agreed to make the data open on the Research Portal, "in a format that favors its use, of in accordance with the regulations on the reuse of public sector information and transparency".

In this context, regarding the processing of researchers' data in the Portal, the following questions are formulated:

"1) It is interesting to know if the open presentation of personal data of researchers respects the principle of purpose (Article 5.1.b) of the General Regulation)

being a treatment compatible with the purpose that justifies the obtaining of the data by the universities.

2) It is interesting to know if the data that is the subject of treatment within the framework of the Portal de la Recerca de Catalunya, is adequate, relevant and limited to what is necessary depending on the purpose of the Portal; in short, if they comply with the principle of minimization (article 5.1.c of the General Regulations).

3) It is interesting to know if this treatment is fully lawful based on the fulfillment of a mission carried out in the public interest (article 6.1.e of the General Regulation) following the indications of the rules cited in the previous sections, or if if this legal basis did not exist, it would require the explicit consent of the interested parties (article 6.1.a).

4) It is interesting to know if the current presentation and way of accessing the information is adequate considering the nature, scope, context and purposes of the treatment, or if it would be advisable to implement technical measures that modify the current system, assessment of measures required by article 24 of the General Regulation.

5) It is interesting to know if, in parallel with the current presentation, the personal data could be made available to users in formats that favor their reuse, in accordance with the legal notice and the acceptance of the license that is they propose and are attached in annexes 6 and 7."

III

When the query is placed in these terms, it is necessary to start from the basis that, according to article 4.1 of the RGPD, it is personal data: "all information about an identified or identifiable natural person ("the interested party"); (...).

Therefore, the processing of data (art. 4.2 RGPD) of natural persons, specifically, the researchers of the different universities that participate in the CSUC, is subject to the principles and guarantees of the personal data protection regulations (RGPD).

According to the Statutes of the CSUC, ten universities in Catalonia are members of this organization (University of Barcelona (UB); Universitat Autònoma de Barcelona (UAB); Universitat Politècnica de Catalunya (UPC); Universitat Pompeu Fabra (UPF); Universitat de Lleida (UdL); University of Girona (UdG); Universitat Rovira i Virgili (URV); Open University of Catalonia (UOC) (art. 4.1 Statutes), as well as the Ramon Llull University and the University of Vic (art. 4.3 Statutes) The Statutes also provide that "other public or private, non-profit entities, which have public interest purposes concurrent with those of the Consortium and in particular in the fields of higher education, can join the CSUC, (. ..)" (art. 4.2 Statutes).

According to the consultation, the Portal, inaugurated in January 2017, is an "open access web space that groups the research activity carried out by the 12 Catalan universities."

According to the consultation, the implementation of the Portal project, "involves the processing of personal data of researchers by the CSUC, data that appear in the files of the participating universities. The data are incorporated into the CSUC systems by interconnection or transfer from the universities' own systems.

The action of the CSUC is the response to an order formulated by each of the universities, which involves the processing of personal data."

According to article 5 of its Statutes, the CSUC is an instrumental means and technical service of the consortia institutions and of the entities and bodies that depend on and are linked to them, and remains obliged to carry out the work that they entrust to it, and adds that the relations between the CSUC and the entities that are part of it "are articulated through assignments."

According to the information available, the data processing of university researchers by the CSUC through the Portal, is established in the Agreements that they would have signed with the CSUC (the consultation provides a copy of the Agreement signed by the University of (. ..) with the CSUC).

For the purposes of interest in this report, it is necessary to start from the premise that the different Universities or public or private entities, as well as the different research institutes that are part of the CSUC, would be responsible for the treatment of the personal data of their researchers (article 4.7 RGPD) and, as such, are subject to the principles and obligations that the data protection regulations establish regarding the treatment, in this case, of the data of its researchers.

The CSUC would, through the corresponding Agreements, be in charge of data processing. It is responsible for the treatment: "the natural or legal person, public authority, service or other organism that treats personal data on behalf of the person responsible for the treatment;" (art. 4.8 GDPR).

Section II of the Agreement that accompanies the consultation, signed between the University of (...) and the CSUC, provides the following: "That with the aim of disseminating scientific production, it is the will of the entities that make it up that the CSUC develop the Portal de Recerca de Catalunya, which will include information on researchers and the research activities of the consortium universities."

The above-mentioned Agreement regulates the processing of the data of the researchers of the University of (...) by the CSUC, and foresees that the University will provide data to the CSUC, which will treat them as data controller, with the exclusive purpose of incorporating them into the Portal (clause one). The Agreement articulates this task of processing based on the provisions of Organic Law 15/1999, of December 13, on the protection of personal data (LOPD).

At the outset, and without prejudice to the data processing of the researchers carried out by the Universities and entities that are part of the CSUC, as responsible, the processing carried out by the CSUC of this data must respond to what the different responsible parties have established in the corresponding contract or agreement by which the CSUC becomes responsible for the treatment (art. 4.8 RGPD) on behalf of each of those responsible.

According to article 28.3 of the RGPD:

"3. The processing by the controller will be governed by a contract or other legal act in accordance with the Law of the Union or the Member States, which binds the controller with respect to the controller and establishes the object, duration, nature and purpose of the processing, the type of personal data and categories of interested parties, and the obligations and rights of the person in charge. Said contract or legal act will stipulate, in particular, that the manager:

a) will treat personal data solely following the documented instructions of the person in charge, including with respect to the transfer of personal data to a third country or an international organization, unless it is obliged to do so by virtue of the Law of the Union or of the Member States that applies to the person in charge; in such a case, the manager will inform the person in charge of that legal requirement prior to the treatment, unless such Law prohibits it for important reasons of public interest; b) will guarantee that the persons authorized to treat personal data have committed to respect confidentiality or are subject to a confidentiality obligation of a statutory nature; c) will take all the necessary measures in accordance with article 32; d) will respect the conditions indicated in sections 2 and 4 to resort to another treatment manager; e) will assist the person in charge, taking into account the nature of the treatment, through appropriate technical and organizational measures, whenever possible, so that he can comply with his obligation to respond to requests aimed at the exercise of the rights of the interested parties established in chapter III; f) will help the manager to ensure compliance with the obligations established in articles 32 to 36, taking into account the nature of the treatment and the information available to the manager; g) at the choice of the person responsible, will delete or return all personal data once the provision of the treatment services is finished, and will delete the existing copies unless the conservation of personal data is required under Union Law or member states; h) will make available to the person in charge all the information necessary to demonstrate compliance with the obligations established in this article, as well as to allow and contribute to the performance of audits, including inspections, by the person in charge or another auditor authorized by said responsible

In relation to what is provided in letter h) of the first paragraph, the person in charge will immediately inform the person in charge if, in his opinion, an instruction infringes the present Regulation or other provisions in the area of data protection of the Union or the Member States. "

It should be borne in mind that the RGPD has introduced changes in the minimum content of the contract that regulates the assignment of the treatment, which affect both the obligations of the person in charge and those of the person in charge - the CSUC-.

As of May 25, 2018, any new processing order must meet the requirements of the new regulation, so the provisions of the standard agreement that is in force on the date of application of the RGPD must be adjust and interpret in accordance with the provisions of article 28.3 of the RGPD, cited.

The Royal Decree-Law 5/2018, of July 27, on urgent measures for the adaptation of Spanish Law to the regulations of the European Union in the matter of data protection, which is in force at the time of issuing this report, and will be until the entry into force of the new LOPD - which is in the parliamentary processing phase (BOCCGG, no. 13-3, of 9.10.2018) -, as provided for in the single final provision of the RDL 5/2018.

Specifically, according to the second transitional provision of RDL 5/2018:

"The data processor contracts signed prior to May 25, 2018 under the provisions of Article 12 of Organic Law 15/1999, of December 13, on the Protection of Personal Data will remain in force until expiration date indicated in them and in the event of an indefinite agreement, until May 25, 2022.

During these periods, any of the parties may require the other to modify the contract so that it complies with the provisions of Article 28 of Regulation (EU) 2016/679."

And in the same sense, the fifth transitional provision of the Project of the Organic Law on the Protection of Personal Data (Project of LOPD, cited), which regulates, among others, the figure of the order of the treatment (art. 33 Project of LOPD).

Given the information available, it is not known whether each and every one of the Universities and other public or private entities of the CSUC (art. 4.2 Statutes), integrated in the Portal, have signed the corresponding treatment assignment agreement with the CSUC, similar to the which is attached to the query.

In any case, given the content of the agreement provided - which is prior to the entry into force of the RGD - we note that this would not include all the provisions that article 28.3 RGD requires regarding the content of a order of treatment. Thus, it is unknown whether the person in charge has documented and specific instructions on the processing of data, including, where appropriate, international data transfers (art. 28.3.a) RGD), and it also does not seem to contain provisions on the obligation of confidentiality required (art. 28.3.b) RGD). With regard to the provision that the CSUC must adopt the necessary measures to guarantee the integrity and conservation of the data (clause four, section 2 of the Agreement), it would not seem sufficient in view of the provisions of article 28.3, sections c) and) RGD). The agreement provided also does not contain provisions regarding compliance with the principle of proactive responsibility (accountability) by the CSUC, in the terms of article 28.3.h) RGD.

In short, given the available information, and in view of the provision of the second transitional provision of RDL 5/2018, it could be advisable to review, if necessary, some of the treatment commission agreements that may have been signed between the different Universities and other entities, on the one hand, and the CSUC, on the other, so that its content is adjusted in terms appropriate to the requirements of the RGD.

In relation to the said signed agreements, it may be of interest to consult the Guide on the person in charge of the treatment in the RGD prepared by the data protection authorities to help those in charge and those in charge in adapting to the requirements of the RGD, available on the Authority's website <http://apdcat.gencat.cat/ca/inici/>.

IV

In this context, with regard to the third question raised: "It is interesting to know if this treatment is fully lawful based on the fulfillment of a mission carried out in the public interest (Article 6.1.e) of the General Regulation) following the instructions of the rules cited in the previous sections, or, if this legal basis did not exist, it would require the explicit consent of the persons interested (article 6.1.a).", the following considerations must be made, in relation to the legality of the treatment (art. 5.1 RGD).

According to article 6.1 of the RGPD:

"1. The treatment will only be lawful if at least one of the following conditions is met:

a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes; b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures; c) the treatment is necessary for the fulfillment of a legal obligation

applicable to the person in charge of the treatment; (...) e) 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; (...)."

Without prejudice to the novelties that may have been introduced by the RGPD in the matter of personal data protection, the treatment consisting in the dissemination of data of researchers from the Universities and, where appropriate, other entities of the CSUC through the Portal, was already occurring before the application of the RGPD (May 25, 2018), if we adhere to the available information and the provisions of the Agreement attached to the query.

In any case, for the purposes of determining the legality of the treatment subject to consultation (communication of University researchers' data through the Portal) and the legal basis of this treatment in terms of article 6 of the RGPD, it is necessary to refer to the regulatory framework relevant to the consultation.

According to article 31 of Organic Law 6/2011, of December 21, on Universities (LOU):

"1. The promotion and guarantee of the quality of Spanish Universities, at the national and international level, is an essential goal of university policy and has the following objectives: a) The measurement of the performance of the public service of higher university education and the surrender of accounts to society. b) The transparency, comparison, cooperation and competitiveness of Universities in the national and international sphere. c) The improvement of teaching and research activity and the management of Universities. (...)

2. The objectives indicated in the previous section will be fulfilled by establishing common quality assurance criteria that facilitate the evaluation, certification and accreditation of: (...) c) The teaching, research and management activities of the university faculty. (...)."

In the same sense, Law 1/2003, of 19 February, on universities in Catalonia, provides that the universities integrated in the university system of Catalonia (art. 2 of Law 1/2003) - which are integrated at the CSUC-, have as fundamental objectives,

among others, "the creation, transmission and dissemination of culture and scientific, humanistic, technical and professional knowledge (...)." (art. 3.1.a) Law 1/2003).

Likewise, the LOU provides that research is a right and a duty of research staff (art. 40.1 LOU), and that the transfer of knowledge is a function of universities (art. 41.3 LOU).

It is also necessary to take into account the provision of additional provision 21^a, of Organic Law 4/2007, of April 12, which modifies the LOU, and which provides the following:

"(...)

4. Equally, the consent of the university staff will not be necessary for the publication of the results of the evaluation processes of their teaching, research and management activities carried out by the university or by public evaluation agencies or institutions.

5. The Government will regulate, after a report from the Spanish Data Protection Agency, the academic and scientific content of the curricula of professors and researchers that universities and public agencies or institutions of academic and scientific evaluation can make public, not being in this case, the prior consent of the professors or researchers is required."

In view of the aforementioned regulations, and specifically section 4, the legal authorization to disseminate information on the evaluation of teaching and research activity seems clear, although it is not known that the provision of the aforementioned additional provision 21^a of LO 4/2007, section 5, has had regulatory development.

Also relevant is article 37 of Law 14/2011, of June 1, on science, technology and innovation (LCTI), according to which:

"1. The public agents of the Spanish Science, Technology and Innovation System will encourage the development of repositories, their own or shared, with open access to the publications of their research staff, and will establish systems that allow them to be connected with similar national and international initiatives.

2. The research staff whose research activity is financed mainly with funds from the General State Budget will publish a digital version of the final version of the content that has been accepted for publication in serial or periodical research publications, as soon as result possible, but no later than twelve months after the official date of publication.

3. The electronic version will be made public in open access repositories recognized in the field of knowledge in which the research has been developed, or in institutional open access repositories.

4. The public electronic version may be used by Public Administrations in their evaluation processes.

5. The Ministry of Science and Innovation will facilitate centralized access to the repositories, and their connection with similar national and international initiatives.

6. The above is understood without prejudice to the agreements under which the rights to the publications may have been assigned or transferred to third parties, and will not apply when the rights to the results of the research, development and innovation activity be susceptible to protection."

To this it should be added that, according to the ninth additional provision of the LCTI:

"1. The provisions of Organic Law 15/1999, of December 13, on the Protection of Personal Data, will apply to the treatment and transfer of data derived from the provisions of this law. (...).

3. The Government will regulate, after a report from the Spanish Data Protection Agency, the academic and scientific content of the curricula of the teaching and research staff of Universities and of the research staff that the funding and execution agents can make public without consent prior to said staff."

It is not known that the provision of the ninth additional provision of the LCTI, section 3, has had regulatory development.

Finally, it is also necessary to take into account the provision of article 14 of Royal Decree 99/2011, of 28 January, which regulates official doctoral courses:

"(...)

5. Once the doctoral thesis has been approved, the university will take care of its archive in open electronic format in an institutional repository and send, in electronic format, a copy of it as well as all the complementary information that was necessary to the Ministry of Education to the appropriate effects.

6. In exceptional circumstances determined by the academic committee of the program, such as, among others, the participation of companies in the program or School, the existence of confidentiality agreements with companies or the possibility of generating patents that fall on the content of the thesis, the universities will enable procedures to develop sections 4 and 5 above that ensure the non-publicity of these aspects. (...)."

It is necessary to take into account - beyond the provision of article 31.1.b) of the LOU, mentioned - the general regulations on transparency, specifically, Law 19/2013, of December 9, on transparency, access to public information and good governance (LT), as well as Law 19/2014, of 29 December, on transparency, access to public information and good governance (LTC), legislation that is applicable to public universities (art. 2.1 .d) LT and art. 3.1.c) LTC).

According to article 2.i) LTC is active publicity: "the duty of the subjects obliged to make public, ex officio, the contents of public information determined by chapter II of title II."

According to article 5.1 LT. "The subjects listed in article 2.1 will publish periodically and updated the information whose knowledge is relevant to guarantee the transparency of their activity related to the operation and control of public action." In the same sense, article 5.1 LTC.

Thus, public universities must comply with the requirements of transparency legislation and provide certain information in relation, among others, to the institutional organization and administrative structure (art. 9 LTC), or to the management economic, accounting, budgetary and patrimonial (art. 11 LTC).

Taking into account these and other provisions of the transparency legislation, Universities may be authorized to provide certain information in terms of active advertising, and without prejudice to the exercise of the right of access to public information (art. 18 et seq. LTC). Thus, among others, the Universities will have to provide information on their teaching and research staff, on the research and investigation projects carried out in their field of action, on their organizational structure, etc. , in the terms provided by the transparency legislation.

Therefore, in connection with the provision relating to transparency in the specific regulations (art. 31.1.b) LOU), the general transparency legislation may also mean that certain information about the organization must be disseminated, the management and the activity of the Universities, specifically, for the purposes they are interested in, information on the teaching and research activities they carry out.

All this, without prejudice to the fact that it will be necessary to respect, where appropriate, the limitations that may derive from other regulations, such as, among others, intellectual property legislation (Royal Legislative Decree 1/1996, of 12 of April, which approves the revised Text of the Intellectual Property Law), regarding the dissemination of information relating to research work or doctoral theses of the researchers concerned.

For all the above, for the purposes of the principle of legality (art. 6.1 RGPD), and in view of the regulations studied, it should be considered that the different Universities subject to the provisions of the aforementioned regulations, as responsible for the treatment in the terms pointed out, they may be able to give open dissemination, both through their own websites or information channels and, for the purposes that interest them, through the CSUC Portal, of certain professional information about their researchers and about the publications and their teaching and research activity.

This, without prejudice to the fact that each person in charge has signed the corresponding processing order for the inclusion and dissemination of information through the said Portal, a matter to which mention has been made.

v

In connection with this, we refer to the first question: "It is interesting to know if the open presentation of personal data of researchers respects the principle of purpose (Article 5.1.b) of the General Regulation) by being a treatment compatible with the purpose that it justifies the obtaining of the data by the universities".

In this sense, we note that the first Clause of the Treatment Commission Agreement that is attached to the consultation, provides for the following:

"This Agreement regulates the processing of the data of the researchers of the University of (...) by the CSUC in the framework of the Catalan Research Portal Project, and establishes the obligations and responsibilities of each party in this matter.

To this end, the University, as responsible for the file or files in which the data appears, will provide data to the CSUC with the exclusive purpose of incorporating them into the Portal (...)."

As we have seen, the regulatory framework studied allows the dissemination of certain information about the management and teaching and research activities of the Universities to be considered enabled, either directly (through the web spaces themselves) or, where appropriate, as in the case that concerns us, through other communication channels. Thus, from the perspective of data protection, it can be understood that the dissemination of certain

personal data of the researchers, to which the query refers, through the Portal of which the responsible parties are part, conforms to the purpose principle (art. 5.1.b) RGPD).

This, as long as each person in charge has signed the corresponding order of treatment with the CSUC, which establishes the purpose for which the CSUC will process the researchers' data -specifically, to disseminate it through the Portal-, and as long as the CSUC complies with the instructions established by each manager in the corresponding order, in terms of article 28.3 RGPD.

VI

Next, it is necessary to refer to the second question raised: "It is interesting to know if the data that are the subject of treatment within the framework of the Portal de la Recerca de Catalunya, are adequate, relevant and limited to what is necessary depending on the purpose of the Portal; in short, if they comply with the principle of minimization (article 5.1.c of the General Regulations)."

According to article 5.1.c) of the RGPD, "Personal data will be: c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("minimization of data"); "

According to the second clause of the Agreement accompanying the consultation: "In the development of the Portal de Recerca de Catalunya project, the CSUC will have access to the following information:

"a) name and surname of the research person; b) Professional contact details; c) ORCID code; d) Electronic address; e) Research group; f) Department; g) Teaching center; h) Publications; i) Presentation of work at congresses; j) Scientific and technical documents; k) Participation in R+D+I and competitive projects; l) Doctoral theses (read or directed)."

According to the query, through the query on the Portal you can access researcher information, specifically: "name and surname, professional e-mail address, ORCID number (international unique identification number of researchers), institution, department or other structure to which it belongs, research groups in which it participates, research projects, publications and directed theses, if applicable."

Regarding the identification and contact data of the researchers (name and surname, email address, ORCID number), as well as the academic or professional data of the researchers, in particular, the information about the research group, department or center teaching to which the researcher belongs, it can be considered that the aforementioned regulatory framework enables Universities and research centers to provide a minimum of identifying and contact information for their teaching and research staff. As has already been said, Universities must be able to disseminate information about their own teaching and research activities, among others, in compliance with trans

Thus, it should be borne in mind that, according to the general legislation on transparency in relation to the exercise of the right of access to public information: "Access to public information must be given if it is information directly related to the "organization, operation or public activity of the administration that contains merely identifying personal data unless, exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail." (art. 24.1 LTC).

Therefore, at the outset, from the perspective of the principle of minimization, there does not seem to be any impediment to the dissemination, through the Portal, of identifying contact data, as well as organizational chart and organizational data of the University itself in relation to its researchers (sections a) g) of Clause two of the Agreement).

We note that, according to article 19.1 of the LOPD Project, to which we refer, the processing of contact data and, where applicable, data relating to the function or workplace of the persons who provide services in a person legal, may be enabled in certain cases. Although it is a bill, it would be good to take into account this provision, which could enable, if necessary, the dissemination through the Portal of contact data and professional location of university researchers, in the terms provided for in the aforementioned regulatory forecast.

Having said that, with regard to the information included in sections h) to) of the second clause of the Agreement that accompanies the consultation (publications, presentation of works at congresses, scientific and technical documents, participation in R+D+I and competitive projects, and doctoral theses read or directed), it should be borne in mind that this is information related to academic and scientific production in the university area, associated with the researchers who work there or are lin

Certainly, the dissemination of this information, directly associated with the researchers, allows access to quite complete academic and professional information about the researchers, so that it may even mean disseminating a professional profile about them. However, the studied regulations provide for the dissemination of information from the university and research field, including information about the scientific and academic production carried out by the Universities. It does not seem that it is possible to adequately comply with the purpose of transparency and quality of universities provided for in the regulations in the terms indicated without disseminating information about scientific production and research in the university field, associated with its authors (researchers, in this case).

Therefore, from the perspective of the principle of minimization, the dissemination of the data from the cited sections h) to), on the production and publications of the researchers, can be considered adequate, since it is information without which it does not seem possible to comply with the intended purpose, which justifies the treatment, in the terms of article 4.1.c) RGPD.

VII

Regarding the fourth question raised: "It is interesting to know if the current presentation and way of accessing the information is adequate considering the nature, scope, context and purposes of the treatment, or if it would be advisable to implement technical measures that modify the current system, evaluation of measures required by article 24 of the General Regulation", we agree the following.

For the information available, access to the Portal allows open consultation of certain information from the researchers of the Universities that are part of the CSUC.

As has been said, the processing of the personal data subject to consultation was already taking place prior to the full application of the RGPD. Given that no information is available on the security measures applied prior to the plenum

application of the RGPD in relation to the data processing that concerns us, it is not possible to determine in this report the need to modify the system of security measures that would be applied at the time of issuing this report, in the terms that raises the query.

In any case, it must be borne in mind that the data treatments carried out, both by the Universities or, where appropriate, research centers that are the source of the researchers' information, and by the CSUC as in charge of treatment, must comply with the principles established in the RGPD, especially, for the purposes that concern, the principle of integrity and confidentiality (art. 5.1.f) RGPD).

Article 24 of the RGPD: "1. Taking into account the nature, the scope, the context and the purposes of the treatment as well as the risks of varying probability and severity for the rights and freedoms of the physical persons, the person responsible for the treatment will apply appropriate technical and organizational measures in order to guarantee and be able to demonstrate that the treatment complies with this Regulation. These measures will be reviewed and updated when necessary. (..

It should be taken into account, therefore, that the RGPD imposes the obligation on the data controller to adopt the necessary technical and organizational measures to guarantee the security of the personal data that will be processed. Obligation that also extends to the person in charge of the treatment (art. 28.3.c) RGPD).

The RGPD sets up a security system that is no longer based on the basic, medium and high security levels that were provided for in the Regulation for the deployment of the LOPD, approved by Royal Decree 1720/2007, of December 21 (RLOPD), but by determining, based on the characteristics of the treatment and a prior assessment of the risks, which security measures are necessary in each case (Recital 83 and article 32 RGPD).

In any case, the scheme of security measures provided for in the RLOPD cannot, since last May 25, be automatically considered valid. In the case at hand, given the information available, it cannot be ruled out that certain measures (applied prior to 25.5.2018) should continue to be applied, if the previous risk analysis concludes that they are the most appropriate to offer an adequate level of security to the processing of personal data carried out by the CSUC through the Portal, although it may be necessary to supplement them with additional measures.

Do also agree that the application of security measures will also be marked by the criteria established in the National Security Scheme (ENS), approved by Royal Decree 3/2010, of January 8.

In this sense, according to the first additional provision of the LOPD Project (BOCCGG, 9.10.2018):

"1. The National Security Scheme will include the measures that must be implemented in case of personal data treatment, to avoid its loss, alteration or unauthorized access, adapting the criteria for determining the risk in the treatment of data to that established in article 32 of Regulation (EU) 2016/679.

2 (new). Those responsible listed in article 77.1 of this organic law must apply to the processing of personal data the security measures that correspond to those provided for in the National Security Scheme, as well as promote a degree of implementation of measures

equivalents in companies or foundations linked to them subject to private law.

In cases where a third party provides a service under a concession, management assignment or contract, the security measures will correspond to those of the public administration of origin and will be adjusted to the National Security Scheme.”

At the time of issuing this report, compliance with the aforementioned forecast (first additional provision of the LOPD Project) is not required. In any case, today the forecasts of the ENS can be taken into account, although their application does not exempt from the obligation to carry out a risk analysis and assessment in order to determine the technical measures and organizational rules that must be applied to data processing, under the terms of the RGPD (articles 24 and 32 RGPD).

Please note that the consultation is accompanied by a report on the assessment of impact on the protection of personal data of the Portal, from 2018.

(...).

(...), the cited report proposes, among others, "to establish more effective mechanisms so that all researchers are adequately informed that their research activity will be published in the PRC (...)" . The report includes other proposals for improvement, such as modifying the contract between the Universities or research centers and the CSUC; appoint the Data Protection Officer (DPO); develop specific security regulations for the PRC, in order to establish the guidelines in the matter of information security; or formalize the attention processes for the exercise of data protection rights, among others.

More specifically, with regard to technical and organizational measures, (...), the Report envisages (...), the establishment of technical and organizational measures that guarantee the integrity, authenticity, availability and the traceability of the data, (...). However, this section does not specify these technical and organizational measures. In short, in view of the information available, it is not clear what the specific technical and organizational measures that are planned to be implemented would be (either because it is planned to maintain those already applied previously, or because it is proposed to incorporate new measures) in relation to the processing of data subject to consultation.

For all of the above, by application of the provisions of the personal data protection regulations (articles 24 and 32 RGPD) at the time of issuing this report, it is required to prepare an analysis and assessment of the risks involved in the data processing, the purpose of which is to determine the technical and organizational measures that must be applied both by the various responsible parties (the universities and other research entities) and, specifically, by the CSUC, as the person in charge of the treatment (ex. art. 28.3 .c) RGPD), in this case, with respect to the treatment subject to consultation.

This, without prejudice to the desirability of implementing the improvement proposals of the impact assessment report that accompanies the consultation, mentioned and, where appropriate, of the maintenance of certain technical and organizational measures applied prior to issue of this report.

VIII

Finally, we refer to the fifth question: "It is interesting to know if, in parallel with the current presentation, personal data could be made available to users in formats that favor their reuse, in accordance with the legal notice and the acceptance of the license proposed and attached in annexes 6 and 7."

Although the query does not specify what these formats could be that allow reuse, as provided for in the "License for the reuse of the information of the Portal de la Recerca de Catalunya", which accompanies the consultation:

"The person who obtains the information can use it for free, non-exclusively, without time limit, worldwide and for any lawful purpose. Consequently, you can: Reproduce it freely; Adapt, modify and transform it to create products or offer services; communicate it, distribute it or publish it through any channel, medium or medium; Exploit it for commercial purposes (...)."

According to the consultation, "currently the personal data of researchers are freely available but not in formats that favor their reuse, as could be the case in open formats or systems that allow mass downloads."

In this context, reference must be made to Law 37/2007, of November 16, on the reuse of public service information, which applies, among others, and additionally, to public universities (art. 2.2.c) Law 37/2007). The regulations studied (LOU, Organic Law 4/2007, LCTI, and Law 1/2003), do not contain specific provisions on the reuse of the information subject to consultation.

The reuse of documents that contain personal data, as would be the case we are dealing with, is governed by the provisions of the regulations on the protection of personal data (art. 4.6 Law 37/2007).

As this Authority has agreed in Recommendation 1/2008, on the dissemination of information containing personal data through the Internet (section 16), the fact that the Reuse Law foresees that the administrations and bodies of the public sector facilitate electronically accessible mechanisms that enable the search for documents, this must not mean a decrease in the guarantees for the data of the people who may be affected by this information, given the provision of article 4.6 of the Law 37/2007.

To this it should be added that, according to article 16 of the LTC:

"1. Obligated subjects must provide people with access to public information in a reusable format, in order to improve transparency, generate value for society and promote interoperability between administrations, within the limits established by the regulations on reuse of public sector information.

2. Public information can be reused for any lawful purpose, especially the reproduction and disclosure by any means of the data subject to public information and the creation of information products or services with added value based on this data."

According to article 17 of the LTC:

- "1. The reuse of public information is free and is not subject to restrictions, except in the cases in which, by regulatory means, it is subject to obtaining a creative commons recognition license, due to the protection of other rights or legal assets, or at the prior request of the interested party.**
- 2. The Transparency Portal must specify the type of reuse applicable to the information it contains, and must also include a legal notice on the conditions of reuse.**
- 3. It must be guaranteed that in the reuse process the content of the reused information is not altered or its meaning denatured, and it is also necessary to cite the source of the data and indicate the date of the last update."**

Given the regulatory framework set out, it is clear that the dissemination of the personal information of researchers, subject to consultation, in reusable formats, must comply with the principles of personal data protection.

In this sense, as has been said, the dissemination of certain information about researchers by the Universities, if applicable, through the Portal, may find its qualification in the regulatory framework studied (LOU, Organic Law 4/2007, Law 1/2003, LCTI and transparency legislation).

Certainly, we cannot rule out that certain information reuse mechanisms, in the case examined, allow the elaboration of professional profiles on the researchers (quantity and type of documents and works produced, publication thereof, subject treated, etc.).

However, this does not contravene data protection regulations as long as this treatment (the dissemination in a feasible format) responds to the legitimate purpose that justifies the dissemination of information through the Portal, that is, to comply with the principle of transparency in relation to teaching and research activity at universities.

For example, if the information obtained in a reusable format makes it possible to know in greater detail which researchers are experts in a specific scientific field (based on the publications and theses carried out, or their participation in certain projects and research groups), this information can be used for the purpose of disseminating the research activity at the universities, and to know and contrast the performance of the public service of education in the university area, in the terms of the regulations studied (art. 31 LOU).

Without prejudice to this, we agree that the data referred to the e-mail address of the researchers should not be the object of reuse, because it is information that, as it refers to a group of affected people that can be quite broad (the set of CSUC researchers), it is liable to be used for purposes incompatible with the purpose of disseminating information in the context in question. This without prejudice to the possible publicity of this data through the Portal.

In this sense, the provisions of Annex 7 must be positively assessed, in the sense that electronic addresses cannot be reused en masse or used for sending commercial information, and in the sense that " it is not considered compatible to draw up rankings or other types of classifications that can manifestly imply a demerit for the people likely to be included", among others.

In any case, according to article 15.5 of the LT:

"5. The regulations for the protection of personal data will apply to the subsequent treatment of those obtained through the exercise of the right of access."

In conclusion, although the dissemination of the information of the researchers subject to consultation in a reusable format is not contrary to the regulations for the protection of personal data in the terms indicated, this reuse must respect the principles and guarantees of the regulations for the protection of personal data, without prejudice to the limitations that, with regard to the subsequent processing of the information, that may derive from other regulations, such as, among others, the regulations of intellectual or industrial property legislation.

In accordance with the considerations made so far in relation to the query raised, the following are made,

Conclusions

Questions 1 to 3: For the purposes of the principle of legality (art. 6.1 RGD), and in view of the regulations studied, the different Universities subject to the provisions of the aforementioned regulations, as responsible for the treatment, may be empowered to give open dissemination, both through their own websites or information channels and, for the purposes they are interested in, through the CSUC Portal, of certain professional information about their own researchers and about publications and teaching activity and researcher of these.

The dissemination of certain personal data of the researchers, referred to in the query, through the Portal of which the responsible parties are part, conforms to the principle of purpose, provided that the corresponding assignment of the treatment with the CSUC establishes the purpose for which the CSUC will process the data of the researchers, in particular, disseminate it through the Portal.

From the perspective of the principle of minimization, the dissemination of this information through the CSUC Portal would conform to said principle, since it is contact data and information relating to the academic and scientific production to which the studied regulation, which foresees its dissemination in the terms indicated.

Question 4: The necessary performance of the prior risk analysis and assessment must determine whether the security measures applied prior to the application of the RGD are the most appropriate to offer an adequate level of security for the processing of data that the CSUC carries out through the Portal, or if necessary complete them with additional measures.

Question 5: The dissemination of information about the researchers in a reusable format would not be contrary to data protection regulations - with the exception of e-mail - since it can comply with the legitimate purpose that justifies the processing of the data by the universities and their dissemination through the Portal. This, notwithstanding that subsequent processing must respect the principles of data protection regulations.

Barcelona, November 20, 2018