

CNS 27/2019

**Opinion in relation to the consultation of a Scientific Foundation on the request by the company committee of the labor census**

**A letter from a university-based scientific foundation (hereafter, the Foundation) is submitted to the Catalan Data Protection Authority regarding the works committee's request to access the labor census.**

**The consultation explains that, following the decrease in hourly credit hours that would have occurred as a result of the reduction in the workforce, the works committee would have requested the labor census from the Foundation.**

**Analyzed the request, which is accompanied by a copy of the labor census form of the Department of Labor of the Generalitat ("Model 2.2. Personnel delegates. Labor census. Elections for representatives of the company's workers"), given the regulations current applicable law and the report of the Legal Counsel, the following is ruled.**

**I**

**(...)**

**II**

**The consultation explains that the Foundation would have communicated to the works committee the decrease in hourly credit hours due to having reduced the workforce below 100 people, going from 20 hours to 15 hours in agreement, according to the consultation, with the management's interpretation.**

**According to the inquiry, the works committee would have requested from the Foundation "the labor census in order to calculate the number of employees under the same criteria as when it is calculated at the time of elections to the works committee" .**

**According to the consultation, the Foundation would have considered that this model (labor census) cannot be given to contain personal data that can only be given when it is mandatory by law, in the event of elections and not for the calculation of staff.**

**The consultation adds that the works council has a basic copy of the contracts with their duration and updates of others and terminations, so that, according to the consultation, the works council can access the necessary information without it is necessary to communicate the labor census.**

**For all that has been said, the query asks if the Foundation is obliged to hand over this model (employment census) to the workers' representatives without being in a situation of elections to the Works Council.**

**The consultation is located in these terms, according to article 4.1 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection Regulation (RGPD), it is personal data: any information about an identified or identifiable natural person ("the interested party"); (...).**

The consultation provides a copy of the document "Model 2.2. Staff delegates. labor census Elections for the representative of the company's workers", from the Department of Labor of the Generalitat de Catalunya.

This form includes, in addition to the work centre's identification data, data on "Fixed workers or those with a contract of more than 1 year (discontinuous permanent workers are included)".

Please note that on the website of the Department of Labor of the Generalitat (<http://treball.gencat.cat>), the document "Model 3.2. Company committee. labor census Elections for workers' representatives in the company."

Considering that the person requesting access to the labor census is the works committee, it seems that the request should refer to the "Model 3.2" form, and not to the "Model 2.2" form, which is what attached to the query.

In any case, for the relevant purposes, both forms (Model 2.2 and Model 2.3) include the same personal data: Name and surname; sex; NIF; Date of birth; seniority in the company (months); professional category.

The processing of personal data (art. 4.2 RGPD), in particular, the communication to the company committee of workers' data, in particular, those contained in the labor census, is subject to the principles and guarantees of the data protection regulations personal data (RGPD and LOPDGDD).

Article 5.1.a) of the RGPD establishes that all processing of personal data must be lawful, fair and transparent in relation to the interested party.

In order for the processing, in particular, the communication of the data to be lawful, one of the conditions provided for in article 6 RGPD must be met, according to which:

"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 responsible for the treatment; d) the treatment is necessary to protect the vital interests of the interested party or another natural person; 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; f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.

(...)

3. The basis of the treatment indicated in section 1, letters c) and e), must be established by:

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

(...).”

The communication to the company committee of the data of the workers included in the labor census must have an enabling legal basis that allows it to be considered lawful. Specifically, it will be necessary to analyze whether, in view of compliance with the legal obligations that the legal system requires of the data controller (the Foundation), the communication of labor census data to the works committee can be considered enabled and, if it is thus, in what terms (Article 6.1.c) RGPD).

### III

First of all, it is necessary to refer to the right of information that the regulations recognize to the workers' representatives and, consequently, to the obligation of the person in charge to provide them with certain information, in relation to the control functions that the regulatory framework recognizes them

Regarding this, this Authority has previously analyzed the right of access of the workers' representatives to information available to the company or the responsible entity, which would be necessary for the exercise of the functions that correspond to them in the CNS opinions 62/2018, CNS 70/2015, CNS 36/2015, CNS 18/2015 or CNS 2/2012, among many others, available on the website [www.apdcat.gencat.cat](http://www.apdcat.gencat.cat)).

Since the request for information is made by the works committee, it is necessary to refer to the revised text of the Workers' Statute Law (hereinafter, ET), approved by Royal Legislative Decree 2/2015, of 23 October, which attributes to the works committee, as a representative and collegial body 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 of the ET provides that: "The works council 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 the same, in the terms provided for in this article." This same article adds that information is understood as "the transmission of data by the employer to the company committee, so that it has knowledge of a certain question and can proceed to its examination".

Next, sections 2 to 5 of the same article 64 of the ET, contain specific forecasts in relation to the questions or matters on which the works councils have the right to receive information, some of them with a quarterly frequency (art. 64.2 ET), others annually (art. 64.3 ET) and others when applicable (art. 64.4 and 5 ET).

Apart from the works committee, the staff representatives must also be able to access certain information, if applicable, for the fulfillment of the functions attributed to them by the regulations, according to the provisions of the Basic Statute of the public employee ( EBEP), approved by Royal Legislative Decree 5/2015, of October 30.

In this context, in general terms it can be considered that, in order to fulfill their functions, the representatives of the workers must be able to access information about the workers in certain cases. In some cases, in attention to the function of

control and representation that is carried out and in the regulatory provisions, the regulations foresee providing aggregated information, and in other cases it may be that the right of access to information of the workers' representatives means that they must know the identity of the workers and other personal data of these.

However, without prejudice to this, in the specific case that deals with the normative provisions studied (ET and EBEP), which shape and specify the right of access to information of the workers' representatives relating it to different cases (arts. 63 and 64 ET), do not allow inferring a specific obligation for the Foundation, as responsible for the treatment, to provide all the personal information contained in the labor census (Forms 2.2. and 2.3, mentioned), in relation to the set of employees of the Foundation, for the purposes raised by the consultation.

Therefore, at the outset, it cannot be considered that the provisions of the ET that configure the right of information of the workers' representatives on certain issues can be the sufficient legal basis for the communication of the labor census to the works council, for the purposes of article 6.1.c) RGPD), in the sense of generating a specific obligation for the person in charge (the Foundation) for the purposes of having to provide said employment census.

#### IV

Secondly, it is necessary to refer to the obligation of the person in charge to provide information to the representatives of the workers in the course of the electoral processes, taking into account the regulatory provisions referred to the labor census, for the purposes of determining the legal basis for the communication (art. 6.1.c) RGPD).

Specifically, article 74 of the ET, which provides the following:

"1. Having notified the company of the intention to hold elections, this, within seven days, will transmit the communication to the workers who must constitute the table, as well as to the representatives of the workers, simultaneously making it known to the promoters.

The electoral board will be formally constituted, by means of an act granted to that effect, on the date set by the promoters in their communication of the purpose of holding elections, which will be the date of initiation of the electoral process.

2. When it comes to elections for staff delegates, the employer, at the same time, will send the members of the electoral board the labor census, which will be adjusted, for these purposes, to a standardized model.

The electoral board will fulfill the following functions:

a) He will make public among the workers the labor census with an indication of who are voters. (...)

3. When it comes to elections for members of the works committee, the electoral board will ask the employer for the labor census and will draw up, with the means that the latter will provide, the list of electors.

**This will be made public on the notice boards by means of its exhibition for a period of no less than seventy-two hours.**

**(...).”**

**Given these forecasts, it is clear that in the course of the electoral processes the employer must communicate the labor census to the works committee and must publish the list of voters in the terms provided for in the regulations.**

**However, according to the information available, this is not the context in which the request for access to labor census information is made by the works committee.**

**From the perspective of data protection, it should be borne in mind that according to article 5.1.b) of the RGPD, personal data must be:**

**"b) collected for specific, explicit and legitimate purposes, and will not be subsequently treated in a manner incompatible with said purposes; in accordance with article 89, section 1, the further processing of personal data for archival purposes in the public interest, scientific and historical research purposes or statistical purposes will not be considered incompatible with the initial purposes ("limitation of the pur**

**It does not seem that the regulatory provision that enables the communication of personal data from the labor census in order to carry out the electoral process, should be used in general to comply with requests for information by the representatives of the workers, detached, as in the case at hand, from the electoral process itself.**

**With all this, although the regulatory provisions that regulate the labor census entail an obligation for the person in charge to communicate it to the workers' representatives, and that this would be a legitimate basis for communication (art. 6.1.c) RGPD), this obligation would only occur during the electoral process and for a very specific purpose, such as the smooth running of the process itself.**

**Since, according to the information available, this circumstance does not occur in the case examined, and taking into account the principle of limitation of the purpose (art. 5.1.b) RGPD), the forecast studied (art. 74 ET) cannot be considered sufficient authorization for the communication of the labor census to the works committee for the purposes of the data protection regulations (art. 6.1.c) RGPD).**

v

**Thirdly, it is necessary to examine whether it could be lawful to communicate the labor census to the works committee for a purpose unrelated to the electoral process, such as having knowledge of the number of workers in the workforce in order to be able to confirm the hourly credit hours that correspond to workers' representatives.**

**With regard to the hourly credit that the regulations recognize for the representatives of the workers for the adequate development of their representative functions (art. 64 ET and art. 9 of the Organic Law 11/1985, of August 2, on trade union freedom - LOLS-), it is necessary to refer to article 68 of the ET, according to which:**

**"The members of the company committee and the staff delegates, as legal representatives of the workers, will have, without prejudice to what is provided in the collective agreements, the following guarantees:**

(...).

e) Have a credit of paid monthly hours for each member of the committee or staff delegate in each work center, for the exercise of their representative functions, according to the following scale:

1. Up to one hundred workers, fifteen hours. 2. From one hundred to two hundred and fifty workers, twenty hours. 3.<sup>o</sup> From two hundred fifty and one to five hundred workers, thirty hours. 4.<sup>o</sup> From five hundred and one to seven hundred and fifty workers, thirty and five hours. 5.<sup>o</sup> From seven hundred fifty and one onwards, forty hours.

The accumulation of hours of the different members of the company committee and, where appropriate, of the staff delegates, in one or more of its components, may be agreed in a collective agreement, without exceeding the total maximum, and may be relieved or relieved of work, without prejudice to his remuneration.”

As can be seen from this regulation, depending on the number of workers in the company, it is determined how many hours of credit the workers' representatives have.

According to its Statutes (...) the Foundation is a non-profit entity that forms part of the so-called University Group of (...).

It should be taken into account Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC) aims, among others, to "regulate and guarantee the transparency of public activity", as well as "regulating and guaranteeing people's right of access to public information and documentation" (Article 1 of Law 19/2014).

Article 3.1.c) of this Law includes in its scope of application the public universities of Catalonia and the bodies that depend on them or are linked or involved in them, including commercial companies, foundations and other instrumental bodies. In addition, the LTC, for the purposes of the application of this Law, qualifies as public administration the instrumental bodies of the public sector referred to in article 3.1.b) (article 2.f) LTC).

Therefore, the Foundation is subject to compliance with the transparency legislation and, therefore, it is necessary to examine this regulation for the purposes of determining the possible qualification of access to the labor census (eg art. 6.1.c) RGPD).

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 19/2013, of 9 December, on transparency, access to information and good governance, is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

However, in accordance with article 20 et seq. of Law 19/2014, the right of access to public information may be denied or restricted for the reasons expressly established in the laws.

Regarding the personal information contained in the labor census (Name and surname; sex; NIF; Date of birth; seniority in the company (months); professional category, according to the available information), which would not be considered specially protected, article 24 of Law 19/2014 provides the following:

"(...)

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 disclosure and 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. (...)"

Likewise, it must be taken into account that the person requesting access to the labor census holds the status of representative of the Foundation's workers and that the examined regulations attribute to him a series of functions, to which we have referred, for the exercise of which it cannot be ruled out that it is necessary to access certain personal information.

On the basis of the functions attributed to the workers' representatives and as long as the personal information subject to communication is essential to carry out these functions, it could be considered that, in the case examined, there would be a public interest in the disclosure of the information that only bid these representatives.

For the purposes of the above-mentioned weighting (art. 24.2 LTC), it should be especially taken into account that, as the consultation points out, the works council has a basic copy of the contracts with their duration, and also of the updates of the registrations and leave

In this regard, it is necessary to take into account the provisions of 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 special employment relationship contracts of high management on which the duty of notification to the legal representation of the workers

(...) "

Likewise, according to article 64.4 of the ET:

"4. (4) The contracts, as well as the notification of the rights reserved of the basic copy of corresponding to them within ten days of their occurrence."

Thus, the Foundation must deliver the basic copy of the signed contracts, so that the workers' representatives can exercise their functions of monitoring and controlling the employer's compliance with the labor regulations.

According to the inquiry, this would already allow the workers' representatives to have sufficient information about the reduction in the workforce that would have occurred and would have led to the reduction of the hours credit of the workers' representatives.

However, in order for the workers' representatives to be able to reliably check whether the monthly hours credit allocated by the Foundation corresponds to the actual and updated number of workers of the Foundation (in the terms of article 68 ET), the works council should have, on the one hand, the information it already has - the basic copy of the contracts and the updates - and on the other hand, contrasting information that allows checking whether, at a given moment, the Foundation's template corresponds to what appears in the basic copy of the contracts.

In this sense, providing a numerical list - even grouped by category - of all the Foundation's workers, without identifying the workers, would not allow the works council to compare or confirm the veracity of the information it already legitimately has (copy basic of contracts and updates).

On the contrary, and for the purposes of the weighting of article 24.2 of the LTC, have a list with the identification (name and surname) of all the Foundation's workers, updated at the time of the committee's request of company, along with the information that the committee already has beforehand, would make it possible to adequately contrast whether the allocation of credit hours to the company committee conforms to the provisions of the regulations.

Having said that, it cannot be overlooked that providing the works committee with an updated list with the first and last names of all the Foundation's workers represents a greater interference in the right to the protection of their personal data than would otherwise be the case provide a list in which only the numerical total of workers - if applicable, grouped by category - is collected, without including the identity of these.

However, this interference does not, in fact, involve providing other personal information other than that already available to the works committee through the basic copy of the contracts, information that the employer must provide, under the terms provided for in the regulations and to which the workers' representatives have legitimate access.

At this point, for illustrative purposes, we mention STS 111/2018, of February 7 (FJ Tercer), according to which:

"2. The power to collect data on the part of the unions and representatives of the workers must be limited according to a principle of relevance and, therefore, be limited to those personal circumstances of the workers that are necessary to develop the task assigned to them. It seems obvious that it must be rejected that such faculty covers personal data in any circumstance, since, if that connection with the function does not occur, the express consent of the workers concerned will be necessary, as the exception of art disappears. 11.2 c) LOPD.

Let's not forget that, in any case, the right to obtain information entails the correlative business obligation to transfer data, legally imposed and detailed in this case through the products of collective bargaining. (...)."

(...)

4. This Chamber has considered it unnecessary to obtain personal data such as the employee's personal telephone or email address (STS/4<sup>a</sup> of September 21, 2015

(RJ 2015, 4353) - rec. 259/2014 -); and also contrary to the legal system the communication of sensitive data such as the contribution by the company of lists of workers affiliated to a particular union, without having requested permission or obtained authorization to make said data public (STS/4<sup>a</sup> of April 8, 2014 ( RJ 2014, 4346) - rec. 19/2013 -).

But in this case, the need to identify the workers who occupy each of the positions that the RTP relates to is not trivial, because the personal elements are related to aspects such as training, qualification, and specialization, being also necessary to define the circumstances of vacancies, their coverage, order of priorities, replacement and promotion systems, etc.

In short, it seems clear that the fulfillment of those functions of the union representatives justifies the access to such data and, therefore, there is no improper access to personal data that contravenes the right to the protection of such data.

All this does not prevent the unions from affirming the obligation to limit the strict use of the data given by the company to the purpose for which the transfer is considered legitimate, because otherwise it would be liable to constitute a violation of the rights of the workers, in addition to the duty of secrecy that art. 65 ET imposes on the legal representatives of the workers (...)."

To this we must add that, as this Authority has highlighted in Report IAI 18/2019 (FJ V), to which we refer, the purpose of access and the guarantees offered is one of the weighting criteria provided for by article 24.2 of the LTC, which must be taken into account, also in the case at hand.

Thus, from the perspective of the principle of purpose (art. 5.1.b) RGPD), it must be taken into account that, according to the information available, the purpose for which the works council would request the access to the labor census (being able to check the assignment of the hourly credit, which in practice allows the exercise of the functions of representing workers), is not a substantially different purpose from that which grounds the employer's obligation to facilitate the basic copy of the contracts, including the identity of the worker

In short, that the works committee can have certain information included in the labor census, in particular, the first and last names of the workers, would allow, together with the information that the works committee already has, to check the real number and updated of workers and therefore check the allocation of hourly credit.

From this perspective, the communication to the works committee of the identity of the workers included in the labor census, would not contravene the principle of purpose limitation (art. 5.1.b) RGPD).

Consequently, it would be enabled, by application of the LTC (art. 24.2), in connection with article 6.1.c) RGPD, the communication of the identity of the workers (name and surname), and, where appropriate, of the professional category data, which is also included in the labor census, according to the available information.

Having said that, from the perspective of the principle of minimization (art. 5.1.c) RGPD), with regard to the rest of the personal data contained in the labor census, specifically: "gender; NIF; Date of birth; length of service in the company (months)", it is necessary to agree that, for the purposes of the aforementioned weighting (art. 24.2 LTC), the communication of this data does not seem necessary for the fulfillment of the intended purpose and, therefore, all and which are also included in the labor census, should not be the subject of

**For all the above, from the perspective of the principles of purpose limitation and minimization (art. 5.1, sections b) and) RGPD), there would be sufficient authorization (art. 6.1.c) RGPD and LTC), to communicate to the works committee the identity (name and surname) and, where applicable, the professional category, not the rest of the identifying data of the workers who appear, according to the available information, in the labor census, for the purposes of being able to calculate, based on the number of workers, the credit of monthly hours attributed to the workers' representatives.**

**In accordance with the considerations made in this opinion the following are made,**

### **Conclusions**

**Taking into account the principles of purpose limitation and minimization (art. 5.1, sections b) and) RGPD), there is sufficient authorization (art. 6.1.c) RGPD and LTC), to communicate to the works council the identity (name and surname) and, where applicable, the professional category of the Foundation's workers, which are recorded according to the information available in the labor census, for the purposes of being able to calculate and compare the credit of monthly hours attributed to the workers' representatives.**

**Barcelona, July 2, 2019**