CNS 54/2021

Opinion in relation to the query made by a professional association on the communication of information linked to training activities

A letter from a professional association is presented to the Catalan Data Protection Authority in which it is requested that the Authority issue an opinion on the possibility of providing certain personal information of the trainers to the companies for which they teach training, so that said companies can, through the Fundación Estal para la Formación para el Empleo (Fundae), apply a bonus.

Specifically, the professional college formulates the following questions:

- **What is the legal basis to be included in the contracts with the trainers of the professional college to be able to process the information and pass it on to Fundae, if that was the case.**

- **Which personal data of the trainers of the professional college are sufficient to comply with the principles of minimization and limitation of the purpose of the treatment indicated.**

- **If in the future Fundae could ask for other additional data without any legislative or regulatory changes.**

- **What information or documentation should be requested from the company that wants to be subsidized to be able to transfer the data of the trainers of the professional college.**

Attached to the query is a copy of the information that Fundae has provided to the professional association on the issue raised.

Having analyzed the request and given the current applicable regulations, and in accordance with the report of the Legal Counsel I issue the following opinion.

I

(...)

II

Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), defines data processing as "any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction" (article 4.2).

The RGPD establishes that all processing of personal data must be lawful, fair and transparent (Article 5.1.a)).

In order for the treatment to be lawful, the data must be treated "with the consent of the interested party or on some other legitimate basis established in accordance with the Law, either in the present Regulation or in virtue of another Law of the Union or of the States members referred to in this Regulation, including the need to fulfill the legal obligation applicable to the person responsible for the treatment or the need to execute a contract to which the interested party is a party or in order to take measures at the request of the interested party prior to the conclusion of a contract" (consideration 40 RGPD).

Article 6.1 of the RGPD regulates the legal bases on which the processing of personal data can be based in the following terms:

> **"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."**

It must be taken into account that, as is apparent from article 6.3 of the RGPD and expressly included in article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (LOPDGDD), the processing of data can only be considered based on the legal bases of article 6.1.c) i) of the RGPD when this is established by a rule with the rank of law.

IV

In view of the context in which we find ourselves, it is necessary to mention the provisions of Law 30/2015, of September 9, which regulates the professional training system for employment in the labor field.

The purpose of this Law is to regulate, within the general framework of the National System of Qualifications and Professional Training, the planning and financing of the professional training system for employment in the labor field, the programming and execution of training actions, control, monitoring and the sanctioning regime, as well as the information system, the evaluation, the quality and the governance of the system (Article 1).

In accordance with article 9 of Law 30/2015, the training actions programmed by companies must be related to the business activity and adapt to the training needs of the company and its workers (section 2).

Regarding its organization and delivery, the same article 9, in its section 3, provides the following:

"3. The companies will be able to organize the training of their workers by themselves, as well as impart the training using their own means for this purpose or by resorting to their hiring.

In the case of a group of companies, the training can be organized independently by each one or by grouping some or all of them. In the case of grouping, any of the companies in the group will be able to organize the training of the group's workers by themselves, as well as provide the training using their own means or by hiring them.

In both cases, the company must communicate the start and end of the training actions programmed under this initiative to the Administration, having to ensure the satisfactory development of the training actions and the follow-up, control and evaluation functions, as well as the adequacy of the training carried out to the real training needs of companies and their workers.

Likewise, companies may choose to entrust the organization of the training to an external entity in accordance with the provisions of article 12. In this case, the training will be provided by an accredited training entity and/or registered in the register of entities of training enabled by the competent public administration referred to in article 15. Entities approved by other administrations to provide training enabling the exercise of certain professional activities will be considered registered or accredited. Neither the organization nor the imparting activity may be subcontracted. It will not be understood that the organization of the training has been entrusted to an external entity, when the activity to be performed by this is limited to the administrative management functions necessary for the correct application of the bonuses."

According to article 12.1 of Law 30/2015, "the training regulated in article 9 can be organized by the company itself or entrusted to business or trade union organizations, to joint structures established in the field of collective bargaining that have their own legal personality, self-employed workers and social economy associations or other external entities, including accredited training entities and/or registered in the corresponding register authorized by the competent public administration, referred to in article 15 ".

Article 12 adds that these organizing entities "will be the ones that hire the accredited and/or registered training entity that imparts the training activities, except in the case of the same entity" (section 2).

Therefore, companies can organize the training of their workers by themselves and impart it using their own means for this purpose or resort to the hiring of an accredited training entity. Likewise, they can decide to entrust the organization of the training to an external entity, who can provide the training or entrust it to another entity, provided that in both cases they are accredited training entities and/or registered in the register of training entities authorized by the Administration.

According to the information available, the professional association formulating the query is the accredited training entity to which the company or, where applicable, the organizing entity contracted by the company, entrusts the delivery of the training actions professionals to their workers, in accordance with the aforementioned articles.

The delivery of the training activity will necessarily entail the processing by the professional association of the personal information of the workers of the company to whom the training is addressed. It is therefore necessary to bear in mind that, from the point of view o

we could find ourselves faced with an action by the professional association as the person in charge of the treatment, in the case of contracting its services directly by the company, or as sub-person in charge of the treatment, in the case that the company had contracted to an external entity to organize the training and this the services of the professional college.

The RGPD defines the person in charge of the treatment as "the natural or legal person, public authority, service or other organism that treats personal data on behalf of the person in charge of the treatment" (Article 4.8) RGPD), in this case, on behalf of the company

In any case, the regulation of the relationship between the person in charge and the person in charge of the treatment, and if applicable between the person in charge and sub-person in charge of the treatment (article 28.4 RGPD), must be established through a contract or a similar legal act that binds them under the terms of article 28.3 of th
In this contract it is necessary to specify the object, duration, nature and purpose of the treatment, the type of personal data and the categories of interested parties, the obligations and rights of the person in charge, and also the destination of the data at the end of the 'order in question, among other issues.

The destination of the data can consist of its destruction, unless there is a legal provision that obliges its conservation, or in its return to the person in charge (article 33 LOPDGDD), which should include both the data that were initially communicate such as those that the person in charge has been able to prepare from this data or those that have subsequently been collected on behalf of the person in charge. In a case such as the one examined, it would cover all the personal information linked to the provision of training by the professional college on behalf of the company, either as a person in charge or as a sub-person in charge of the treatment. This may vary depending on the mode of teaching the course (face-to-face, teletraining or mixed, in accordance with article 4 of Royal Decree 694/2017, of July 3, which implements Law 30/2015) . In any case, it seems that this information should include identification, attendance or course monitoring data, those relating to the activities or exercises carried out and their evaluation, including the course evaluation questionnaire and/ or the course completion or attendance certificate.

In a case like the one examined, the communication should also include certain information about the person responsible for the training and about the trainer, given that they are part of the execution of the training action carried out by the college professional law on behalf of the company.

In addition, this information would also be necessary to fulfill the obligations of control and monitoring of said training, as well as to guarantee its adequacy to the business activity, which Law 30/2015 imposes on the company.

Thus, in accordance with article 9.3 of Law 30/2015, already cited, the company "must communicate the start and end of the training actions programmed under this initiative to the Administration, having to ensure the satisfactory development of the actions formative
and the functions of follow-up, control and evaluation, as well as the adaptation of the training carried out to the real training needs of the companies and their workers".

In this sense, it should be borne in mind that Law 30/2015 itself foresees, among others, the obligation of the organizing entities to "facilitate the companies that organize the training of their workers with the documentation related to the organization, management and imparting of training actions (…)" (article 12.2).

This information, in accordance with the principle of data minimization (Article 5.1.c) RGPD), should in any case include adequate, relevant and limited data to what is necessary to achieve the indicated purpose.

In this sense, it could be justified to provide the company (or organizing entity) with the identification and contact details of the person responsible for the training and also of the person providing the training and, bearing in mind that it is necessary for the training to be given with criteria that enable training by skills and a learning process suitable to it (article 4.3 RD 694/2017), it could even include information about the experience or professional training (knowledge and skills) of the training person to impart the training in question and, when appropriate, also to provide the training in the teletraining modality.

v

The professional association states in its inquiry that the company - or the organizing entity contracted by it - requests certain information about the students and the person who teaches the training activity, for the purposes of being able to access a bonus on the cost of training.

Article 9.4 of Law 30/2015 provides that, in order to finance the expenses derived from the scheduled training, "annually, from the first day of the budget exercise, companies will have a "training credit", which they may make effective by means of bonuses in the corresponding business contributions to the Social Security as the communication of the completion of the formative actions is made. The amount of this training credit will be obtained based on the amounts entered by each company the previous year as a professional training fee and the percentage that, depending on its size, is established in the General Budget Law of the State of every exercise (...)".

In this same sense, article 18.1 of RD 694/2017 provides that "companies may apply annually, in the manner established by the General Treasury of Social Security, the bonuses on Social Security contributions from the communication of the completion of the training. (...)".

In accordance with article 15 of Order TAS/2307/2007, of July 27, which partially implements Royal Decree 395/2007, of March 23, which regulates the vocational training subsystem for employment in terms of demand formation and its financing, and the corresponding telematic system is created, as well as the personal data files owned by the State Public Employment Service, applicable to everything that is not contrary to what is established in RD 694/2017, the application of the aforementioned bonuses must be carried out "previo cumplimente de los siguientes requisites:

a) Information to the legal representation of the workers.
b) Telematic communication at the start of the training. c) Implementation of the training. d) Telematic communication of the completion of the training."

With regard specifically to the communications of the beginning and end of the training actions, Law 30/2015 provides that it is the responsibility of the company (Article 9.3) or the organizing entity to carry them out if it so agrees with the company (article 12.2).

Regarding the content of these communications, article 15 of RD 694/2017 provides the following:

"2. The companies and external entities provided for in the previous article to which the organization of the training had been entrusted, must communicate the information of each training action and of each of the groups in which it is imparted, containing, at least, the name and the basic contents of the formative action, the delivery method, the expected number of workers

participants and that of teachers and/or tutors in each training activity and the date, time and place of implementation, as well as the company name and NIF of each of the companies that plan to participate in the training.

Likewise, before the company applies the corresponding bonus, it must communicate the completion of each training group with information on the name of the training action carried out, the list of participating workers who have completed the training, the number of teaching hours and the total cost of the training, with indication of the maximum cost that can be reimbursed."

The same forecasts are included in articles 18 and 19 of Order TAS/2307/2007, of 27 July. Highlight, with regard to the list of participating workers who have completed the training, that, in accordance with article 19.2, "the trained workers belonging to the priority groups referred to in the article should be identified, if necessary 7".

For the case of the communication of the start of the training, article 15.2 of RD 694/2017 speaks, in fact, of communicating the expected "number" of participating workers and that of teachers and/or tutors in each training action. Therefore, according to this, a priori the company (or organizing entity if applicable) should not communicate personal data of these people.

For the case of the communication of completion of the training, article 15.2 refers to communicating a list of the participating workers who have completed the training, information held by the training entity and which, as we have seen, should facilitate the company by being part of the provision of the service entrusted by it.

However, at the electronic headquarters of Fundae, entity in charge of data processing for which the Servicio Público de Empleo Estatal (SEPE) is responsible, in accordance with the third additional provision of Order TAS/2307/2007, of July 27, there is various information on the procedure to be followed to improve the training of workers.

With regard to the communication of the start of the training, it is agreed that it is necessary to communicate, through the application enabled for that purpose, the identification data of the workers who will participate in the training activity, as well as the identification data and contact details of the person responsible for the training and the trainer.

Taking into account that the bonus is applied to business contributions to the Social Security, it would be justified to communicate the data that allow the SEPE to identify the workers in respect of whom the company intends to apply the bonus and to verify their membership the beneficiary company already from the beginning of the training. In any case, this would be information available to the company as responsible for its treatment.

With respect to the identification and contact details of the person responsible for the training and the person providing the training, it is also information, as we have seen, that the company should be able to dispose of, as part of the execution of the contract entrusted to the training entity.

However, the professional association states in its consultation that the information requested from the companies or organizing entities includes not only the identification and contact data indicated, but also covers the employment situation of the training person and, therefore what does it do to the students, the user and the password to access the virtual classroom.

Based on the information available, the requirement for this information could be related to the fulfillment of the obligation that Law 30/2015 imposes on the company to submit to and guarantee the correct performance of the functions of checking, monitoring and control of the training actions and the corresponding bonuses, carried out by the SEPE with the

technical support from Fundae (articles 9.3 and 17). Obligation that Law 30/2015 also extends to the organizing entities in its article 12.2.

In this sense, the applicable regulations provide for the obligation of companies to "keep at the disposal of the competent control bodies, the supporting documentation of the training for which they have enjoyed bonuses in the Social Security contributions" (article 12.2 .d) RD 694/2017) and of the organizing entities to "keep at the disposal of the competent control bodies, the supporting documentation of the organization of the training commissioned by the companies under this royal decree" (article 14.4.e) RD 694/2017).

With regard specifically to the application of bonuses and their justification, it also provides that "the company must keep at the disposal of the control bodies for a period of 4 years and, in its case, during the period established in the Community legislation the supporting documentation (invoices, accounting justification and any other supporting document) of the completion of the training" (article 18.2 RD 694/2017).

Article 18.3 of RD 694/2017 provides that "in carrying out their monitoring and control activities, the public employment services will verify the accuracy of the information communicated electronically and the completion of the subsidized training. (…) If after checking the origin and accuracy of the bonuses applied by the companies, or other follow-up and control actions, bonuses not applied correctly, breaches of the obligations established in this royal decree and its regulations are revealed of development, including that of keeping at the disposal of the control bodies the supporting documentation collected in section 2, and/or other alleged irregularities, these facts may entail the return, total or partial, of the bonuses improperly applied, depending on that the scope of the checks carried out for each entity will affect all or part of the actions or training groups. In any case, it will also involve the partial return of the bonuses applied when said amounts exceed the credit assigned to the company. (...).”

Given this, it is clear that the SEPE must be able to have all that information related to the training activity subsidized by the company that is necessary and relevant to be able to carry out the monitoring and control actions assigned to it legally, with the purpose of verifying compliance with the applicable regulations and the quality of the training provided, as well as detecting possible irregularities in the application of the corresponding bonuses practiced by the companies.

It must be remembered that the training programmed by the companies must be related to the business activity and adapt to their training needs and those of their workers (article 9.3 Law 30/2015). Also that it must be taught by a person who has sufficient capacity and the necessary skills to teach it (article 4.3 RD 694/2017). And that only training actions aimed at providing compulsory training to workers are eligible for bonuses (Article 6.5.a) Law 30/2015).

The exercise of these functions by the competent authorities may require certain information linked to the training action that may be held by the training entity.

Article 30 of Order TAS/2307/2007, of July 27, regulates the monitoring and control actions carried out by the Public Administrations in the following terms:

> **"The follow-up and control actions carried out by the different Administrations The following will be public:**

1.º In Real Time: They will understand the monitoring of the training activity in the place of its delivery during its implementation, through the physical evidence and the testimonies collected through interviews with those responsible for training, students and trainers, with in order to carry out a check on the execution of the training action, its contents, actual number of participants, facilities and educational media.

In the case of training whose learning process takes place through the conventional distance modality or through teletraining, the companies or entities with which they arrange the delivery of the training must facilitate, at the request of the control bodies, the information and the technical instruments necessary for the exercise of the control function, including telematic access to the tools used in the execution of the training activities.

2.º Ex post: They will be carried out once the execution of the bonus training actions has been completed, through physical evidence, in order to verify, among others, the following extremes:

a) Execution of the formative action. b) Actual number of participants. c) Give the participants the diploma or training certificate and, where appropriate, the inclusion of the emblem of the European Social Fund. d) Documentation justifying the training costs, their accounting, as well as the materialization of the payment before the last working day for the presentation of the quotation bulletin for the month of December of the corresponding economic year, taking into account the requirements established by the Spanish and, as the case may be, Community regulations regarding the co-financing of the European Social Fund. e) In the actions carried out by means of the teletraining modalities, at a conventional or mixed distance, an additional verification of the material deliveries, of the follow-up controls and of the tests entailed by the programmed teaching will be carried out, as well as the verification of the supports didactic and tutorial assistance.

3. Verification of the bonuses applied: In accordance with the provisions of article 17.3 of Royal Decree 395/2007, of March 23, the Public Employment Services will verify the origin and accuracy of the deductions that have been made in the form of bonuses practiced by companies. This verification will include the verification, among others, of the following points:

a) Bonus credit assigned and bonuses applied. b) Compliance with the required private co-financing percentage.
c) Belonging of the participating workers to the beneficiary companies.
d) Fulfillment of the duty of information to the legal representation of workers in the terms provided for in article 16. (…)"

The monitoring and control of the correct execution of the subsidized training action may require the control body to contact the training person for the purposes of checking or contrasting certain issues linked to the development of the training action and also to verify the fulfillment of the requirements of competence or professional experience to teach the bonus training required

With regard to the trainers, in view of this precept it may be clear the justification for communicating for control purposes the identity (name and surname and ID number) and professional contact of the trainers (physical address, email address and telephone). But beyond

clear how relevant it may be to also have data on your employment situation for this purpose.

As far as the students are concerned, the justification for the request for the data relating to the user and access password to the virtual classroom assigned to the students of the training activity is not clear. While it is true that the monitoring and control of the correct execution of the training action subsidized in real time would require access to the virtual learning platform in teletraining by the control bodies with an appropriate profile, this access would have to be carried out with their own credentials and not with those given to the participa

Therefore, these data should not be made available, neither to the company nor to the organizing entity, for not complying with the principle of data minimization (Article 5.1.c) RGPD), unless it can be made available more information that can justify its communication for the purposes of the control or verification of the training by the SEPE.

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

Conclusions

The communication of the identification, contact and training or experience data of the trainers to give the training action would be lawful and would conform to the principle of data minimization, to be necessary both for the execution of the contract and for compliance of the obligations that Law 30/2015 imposes on companies and organizing entities.

The competent authorities may require the information linked to the training action necessary to control the execution and application of the bonus by the companies, in view of the functions attributed to them by Law 30/2015 and the implementing regulations .

With the information available, it does not seem justified to communicate information relating to the user data and access password to the virtual classroom assigned to the students of the training activity, nor those relating to the situation professional of the training staff or responsible for the activity.

Barcelona, January 18, 2022