apdcat
Autoritat Catalana de Protecció de Dades

Opinion in relation to the query made by a public company regarding the Workers' Committee's access to its staff's remuneration information and, specifically, to the Remuneration Register

A letter from a public company is presented to the Catalan Data Protection Authority in which it asks whether the Workers' Committee can access remuneration information of its staff and, specifically, the remuneration register, taking into account that certain professional categories they have a small number of workers so they are easily identifiable.

Having analyzed the query, in view of the current applicable regulations, and in accordance with the report of the Legal Adviser, I issue the following opinion.

I

(...)

II

The entity states in its consultation letter that it is negotiating the entity's Equality Plan with the Workers' Committee and that, in order to assess the pay audit, the workers' representatives have requested to have the data full remuneration (salaries) of all staff. In their opinion, they cannot hand over this information, given that it must be protected in accordance with personal data protection legislation.

Then, the entity points out that the problem derives from the specific legislation applicable to the preparation of equality plans, since it foresees that the representation of the workers must have access to the full information of the Remuneration Register. The entity maintains that it has been providing the Workers' Committee with the said Register, although previously omitting the information on the professional categories where there are only one or two workers, given that it would be very easy to identify them. The Workers' Committee, however, maintains the entity, wants to receive this information in order to continue with the negotiations.

In view of this, the entity requests the opinion of this Authority on the consideration that workers' remuneration data should have in terms of data protection and on whether the Workers' Committee can access remuneration information that allows to know the salary of specific people.

These issues are examined in the following sections of this opinion.

III

Information about the remuneration of a job associated with the natural person who occupies it, so that this person is identified or identifiable, directly or indirectly, without disproportionate efforts, is considered personal data and, therefore, its treatment must conform to the principles and guarantees established by Regulation 2016/679, 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 data and which repeals Directive 95/46/EC (RGPD).

Article 4.2) of the RGPD defines data processing as *"any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as collection, registration, organization, structuring, conservation , adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction."*

The RGPD provides that all processing of personal data (such as the communication of retributive data) must be lawful (Article 5.1.a)) and, in this sense, establishes a system for legitimizing the processing of data that is based on the need for one of the legal bases established in article 6.1 of the same RGPD to apply. Among these, it is interesting to highlight in the present case the one established in section c), regarding that the treatment will be lawful when *"it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment."*

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), data processing can only be considered based on the legal basis of article 6.1.c) of the aforementioned RGPD when it is established by a rule with the rank of law.

IV

With respect to the concurrence of a legal provision that legitimizes access to remuneration information of public employees by their representative bodies, note that this is an issue that has been examined by this Authority previously in, among others , the reports IAI 10/2022, IAI 81/2021, IAI 44/2021 or IAI 42/2021 (available at the following link on the Authority's website), based on the provisions of Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), which recognizes the right of people to access public information (article 18).

In these reports it is agreed that the representative bodies of public workers have a specific regime of right of access to information, so this regime is the one that should be applied as a priority, without prejudice to the supplementary application of the access regime provided for in the transparency legislation (DA 1a, section 2, LTC).

Specifically, considering (in the present case) labor personnel, it should be borne in mind that article 64 of the Workers' Statute, approved by Royal Legislative Decree 5/2015, of October 30 (ET), attributes to the Works Committee, and by extension also to the staff delegates (article 62.2 ET), the right to be informed *"(...) about those issues that may affect the workers, as well as about the situation of the company and the evolution of employment in the same, in the terms provided for in this article."* Adding that information is understood to mean *"the transmission of data by the employer to the company committee, so that it has knowledge of a certain issue and can proceed to its examination"* (article 64.1 ET). And section 7 also attributes to the representative bodies the function, among others, *of "vigilance in the fulfillment of the rules in force in labor matters, of Social Security and employment, as well as the rest of the agreements, conditions and uses of company in force, formulating, as the case may be, the appropriate legal actions before the employer and the competent bodies or courts."*

As this Authority has decided on previous occasions (in the aforementioned reports and/or also, among others, in the opinions CNS 41/2018 or CNS 28/2017), apart from the personal data that may be included in the basic copy of the contracts and which can be known by the Works Council in the legally established terms (articles 8.3.a) and 64.4 ET), in general, the provisions of the ET are translated into a right of the Committee of 'company to receive information on the various issues that are broken down in the precepts of the ET, without this rule clearly stating that this information must be linked, individually, to each worker.

It is considered, for the purposes of interest, that the right to obtain information on the situation of the company and the evolution of employment in the company - or on the evolution of remuneration - which the regulations recognize in the bodies of representation of workers is not equivalent to knowing the details of the remuneration of all public workers. Delivering this information, individually and associated with all workers, would go beyond the ET's forecasts regarding the information that must be communicated to said representative bodies.

In view of this, the need to also take into account the provisions of the LTC and the application, in particular, of article 24 of the LTC is made clear in said reports. Thus, in the cases examined, it has been considered that a reasoned weighting should be carried out between the public interest in the disclosure of remuneration information and the rights of the workers affected, in the terms of article 24.2 of the 'LTC.

In this sense, it should be noted that this Authority has been considering that, in view of the provisions of article 11.1 b) of the LTC and article 31 of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC), workers' representatives must be able to access the remunerations, compensations and per diems received by senior officials of the Public Administration and by the management staff of public bodies, companies, foundations and consortia, as the case may be, individually for each job and for any remuneration concept.

Criterion that this Authority has been making extensive with respect to personnel who occupy positions of trust, command, or special responsibility within the organization, with management functions, singular positions of free appointment, contingent personnel or positions that involve a high level remuneration or a certain margin of

discretion regarding its provision. These are positions that, due to their uniqueness and also due to the remuneration level they usually have associated, or due to the fact that they are freely appointed, the knowledge of their remuneration can be relevant for the control of the use of public resources, for which so the result of the weighting would in these cases be the prevalence of the public interest in its disclosure and, consequently, the possibility of accessing the individualized retributive information on said sites, even identifying the people affected.

With regard to the rest of the workers in whom these circumstances do not apply, the Authority has considered that, in general, the evaluation of the use of public resources can be done by having the information on remuneration grouped together by categories or according to the different types of workplace and not individually. In this sense, it has been pointed out that the disclosure of the income of a natural person facilitates the obtaining of an economic profile of the affected person which may end up causing him harm, both in the professional field and in front of financial institutions, socially, etc.

In some specific cases, however, it has been considered that, in order to achieve the surveillance objective intended by the representative bodies, the information could be given to them in a pseudonymized manner (article 4.5 RGPD and article 70.6.b) RLTC), this is replacing the first and last name by a code assigned to each of the workers, as long as they are jobs that have a sufficiently large number of workers to prevent their re-identification. On this particular issue we refer to the considerations made, for example, in the IAI 42/2021 report.

It has also been warned that in some specific case it might even be necessary to finally have the identification of a specific worker, for example, if there are indications of any irregularity in which the identity of the affected worker may be relevant, although, if this is the case, the access of the representative bodies, prior to the procedure of hearing the affected person (article 31 LTC), should be limited to the remuneration information of the specific working person affected, not as well as that of all the employees of the organization (Article 5.1.c) RGPD). On this particular issue we refer to the considerations made, for example, in opinion CNS 46/2019.

Therefore, as can be seen from the considerations presented so far, with regard to the possibility of accessing certain remuneration information of public employees by their representative bodies, it will always be necessary to be aware of the circumstances of the specific case.

v

According to the consultation, in the present case the purpose of the Workers' Committee's request for access to remuneration information (salaries) of all the company's employees is to be able to assess the audit remuneration carried out by the entity as part of the negotiation that is being carried out to draw up its Equality Plan.

This requires taking into account the provisions of Organic Law 3/2007, of March 22, for the effective equality of women and men.

Article 45 of this LO 3/2007, relating to the preparation and application of equality plans, provides that *"companies are obliged to respect equal treatment and opportunities in the workplace and, with this purpose , must adopt measures aimed at avoiding any type of labor discrimination between women and men, measures that must be negotiated, and where appropriate agreed, with the legal representatives of the workers in the manner determined in the labor legislation" (paragraph 1*) and adds that *"in the case of companies with fifty or more workers, the equality measures referred to in the previous section must be directed to the development and application of an equality plan, with the scope and content established in this chapter, which must also be subject to negotiation in the manner determined in the labor legislation"* (section 2).

Article 46 of LO 3/2007 regulates the content of companies' equality plans, in the following sense:

> *"1. (...)*
> *2. The equality plans will contain an ordered set of evaluable measures aimed at removing the obstacles that prevent or hinder the effective equality of women and men. In advance, a* ***negotiated diagnosis will be drawn up, as the case may be, with the legal representation of the workers*** *, which will contain at least the following matters:*
> *a) Selection and recruitment process.*
> *b) Professional classification.*
> *c) Training.*
> *d) Professional promotion.*
> *e) Working conditions,* ***including the wage audit*** *between women and men.*
> *f) Responsible exercise of personal, family and work life rights.*
> *g) Female underrepresentation.*
> *h)* ***Retributions*** *.*
> *i) Prevention of sexual harassment and because of sex.*
> ***The preparation*** *of the diagnosis will be carried out within* ***the Negotiating Commission*** *of the Equality Plan, for which* ***the management of the company will provide all the data and information necessary to prepare it in relation to the matters listed in this section, as well as the data of the Registry*** *regulated in article 28, section 2 of the Estatuto de los Trabajadores.*
> *3. (...).”*

Point out that in the negotiating Commission of the Equality Plan, referred to in this article 46.2, the company's representation and the workers' representation must participate equally (article 5.1 of Royal Decree 901/2020, of 13 October, which regulates equality plans and their registration and modifies Royal Decree 713/2010, of 28 May, on registration and deposit of collective labor agreements and agreements).

So, in accordance with article 46.2 of LO 3/2007, transcribed, the members of the negotiating committee of the entity's equality plan - and therefore also the representatives of the workers who are part of it - have right to access that information that, in relation to the subjects listed in this article, is necessary to carry out the diagnosis of the situation prior to the preparation of the Equality Plan. This would include certain remuneration information available to the entity,

without these legal provisions implying that said information must be provided on an individual basis. In fact, to achieve this diagnostic purpose, it would not be necessary to have personal data of working people (Article 5.1.c) RGPD).

This article of LO 3/2007 expressly mentions the delivery of data from the Register regulated in article 28.2 of the ET, known as the Payroll Register.

Article 28.2 of the ET provides that *"the employer is obliged to keep a register with the **average values** of the salaries, salary supplements and extra-salary benefits of his staff, **disaggregated** by sex and **distributed** by professional groups, professional categories or jobs of equal or equal value".*

Article 5 of Royal Decree 902/2020, of 13 October, on equal pay between women and men, specifies that this Remuneration Register must cover the entire workforce of the company, including managerial staff and senior positions (section 1).

And, in relation to the *"average values"* and the level of aggregation at which the remuneration information must be included in the Register , it states that *"for these purposes, they must be established in the remuneration register of each company, conveniently broken down by sex, the arithmetic mean and the median of what is actually perceived by each of these concepts in each professional group, professional category, level, position or any other applicable classification system. At the same time, this information must be disaggregated according to the nature of the remuneration, including base salary, each of the supplements and each of the extra-salary payments, specifying each payment separately" (paragraph* 2) .

In view of these forecasts, although the representatives of the company's labor personnel who are part of the Negotiating Committee of the Equality Plan have the right to access the information on wages contained in the Remuneration Register, it is necessary to have considering that this is information that, a priori, would not be considered personal data (Article 4.1) RGPD), given that this Register does not have to include the salary of each working person (Article 26 ET) but only *" los valores medios"* of salaries, salary supplements and extra-salary perceptions of the entity's workforce, disaggregated by sex and distributed by, in this case, professional groups (article 28.2 ET).

Therefore, it can be said that the representative members of the Commission, for the purposes of assessing the salary audit that has been carried out as part of the diagnosis of the remuneration situation of the entity, must not access the full salaries of all the company's employees, individually, but only for aggregated information.

However, we cannot ignore the fact that this information could become personal data regarding those professional categories or groups with a small number of workers, given that in these cases they would be perfectly identifiable by mere deduction by those who have access in the said Remuneration Register. This question is expressly mentioned in the present inquiry, given that the entity claims to have professional categories where there are only one or two people.

It is certainly so, but this is an inevitable consequence of the fact that the examined application regulations provide that the remuneration information that must be included

in the Remuneration Register must necessarily be grouped by professional groups, professional categories or equal jobs or of equal value

There is no record of what these professional categories would be with a single working person or two at most. Point out that in the case that they correspond to the management staff of the entity or to other people who hold positions of responsibility or high retributive level, the impact on their privacy derived from an eventual disclosure of the salary they perceive would be minor, bearing in mind that, as has been said, it is information that for transparency purposes could be known not only by the workers' representative bodies but even by any citizen.

In any case, taking into account that the request is made by representatives of the workers who are part of the Negotiating Commission of the Equality Plan; that the applicable sectoral legislation expressly recognizes the possibility of accessing all the information they require for the diagnosis of the entity's remuneration situation; that the information from the Payroll Register is fundamental information in this regard; and the duty of confidentiality that the regulations impose on the members of the Negotiating Commission regarding the information obtained (Article 5.8 RD 901/2020), so that the treatment they do must always be linked to the exercise of their duties as members of the Negotiating Commission, not being able to use it outside the strict scope of the Commission or for purposes other than those that motivated its delivery, the weighting of conflicting interests should lead in the present case to admit the possibility of knowing this information from the Remuneration Register, even though the affected persons may be identifiable.

Conclusions

The access of the representative bodies of public workers to the remuneration information of these people in an individualized way will be conditioned by the applicable regulatory provisions and the concurrent circumstances in the specific case.

Having examined the regulations governing Equality Plans in companies, it can be said that the members of the organization's Workers' Committee who are part of the Equality Plan Negotiating Committee must be able to access the information in the Remuneration Register , which must comply with the terms of article 28.2 of the ET, despite having professional categories with a small number of workers , excluding those obliged to respect the confidentiality of this information.

Barcelona, March 9, 2023