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In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected population, the physical persons affected could also be identified.

File identification

Archive resolution of the previous information no. IP 51/2019, referring to the Consortium of the (...)

Background

1. On 18/02/2019, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Consorci de les (...) (hereinafter...), due to an alleged breach of the regulations on the protection of personal data.

Specifically, the complainant stated that *"on our website on (...) in the section Board of edicts, a resolution has been posted on the composition of the Consortium's Business Committee, with first and last names and trade union affiliation publicly and with access to everyone"*, he added the URL address where to find the referenced document (...). The complainant complained that the publication had been made without the prior consent of the affected persons.

2. The Authority opened a preliminary information phase (no. IP 51/2019), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts they were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.

3. On 02/20/2019, in this preliminary information phase, the Authority's Inspection Area made a series of checks via the Internet on the facts subject to the complaint, which were completed on the same date. Thus, it was found that by following the steps indicated by the complainant, it was indeed possible to access the document called *"Composition Company Committee Consortium of the (...) elections held on March 22, 2018"*, published in the *"Electronic Board" section*, within the *"Electronic Headquarters"* of the website of the (...). This document contained the first and last names and trade union affiliation of the people who had been elected in the trade union elections, held in date 03/22/2018, as representatives of the workers of the workforce of (...) in the Works Committee, among them, the person making the complaint here. According to the published information, the planned period of public exposure of the announcement was from 06/28/2018 to 03/20/2020.

Carrer Rosselló, 214, esc. A, 1st 1st
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4. On 02/22/2019, also during this preliminary information phase, the reported entity was required to report, among others, on the legal basis that would legitimize the processing of personal data due completed with the publication on the internet of the document "*Composition Company Committee Consortium of the (...) root the elections held on March 22, 2018*", which contains the personal data of the union representatives in the Company Committee from (...).

5. On 08/03/2019, the entity responded to the aforementioned request through a letter in which it set out the following:

- That following "*being aware of the complaint submitted to your Authority, the Data Protection Commission of (...) on February 27, 2019, according to the notice issued by the e-TAULER application of the Open Administration Consortium of Catalonia, proceeded to withdraw that same day "ad cautelam" from our electronic notice board (e-TAULER) the minutes of scrutiny*".

- That "*The legal basis that the (...) considered to make public the result of the trade union elections, held on March 22, 2018, which resulted in the current composition of the Works Committee, is Royal Legislative Decree 2/2015, of 23 October, which approves the revised text of the Workers' Statute Law. Article 75.5, entitled "Voting for delegates and company committees", provides:*

"5. The president of the table will send copies of the act of scrutiny to the employer and the auditors of the candidacies, as well as the elected representatives. The result of the vote will be published on the notice boards."

- That "*Article 11, "Publication of the acta de scrutinio", of Royal Decree 1844/1994, of September 1, which approves the Regulations for elections to workers' representative bodies, is pronounced in the same sense in the company:*

"The result of the vote will be published on the bulletin boards within the twenty-four hours following the completion of the drafting of the voting record."

- That "*It is an electoral process to choose the representatives of the workers of (...), where the role played by trade unions is basic and fundamental, in the same way as the people who represent them. Hence the importance of being able to identify these people*".

- That "*It is only in l'e-TAULER where the (...) has publicized the names and surnames and acronyms of the trade union organizations they represent, people who freely and voluntarily participated in the electoral process regulated by the rules mentioned above. Union membership data has not been advertised or processed anywhere else, pursuant to Article 9.1 of Regulation 20161679."*

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- That *"The advertising in l'e-TAULER is, therefore, the result of the execution of a legal commandment, provided for in the rules already referred to (Statute of Workers and Royal Decree 1844/1994)".*
- That *"Law 39/2015, of October 1, on common administrative procedure of public administrations provides in article 45.1 that 'Administrative acts will be published when the regulatory rules of each procedure establish it or when advised by reasons of public interest appreciated by the competent body"*
- That *"Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia in its article 58.3 "The public administrations can replace or supplement the publication of acts and communications that, for legal or regulatory provision, must be published on the notice board or by means of edicts for publication in the corresponding electronic headquarters"*
- That *"The (...) by Resolution of its General Directorate dated February 26, 2015, requests registration in the service of SEU-e (Electronic Headquarters) and e-TAULER (Notice Board electronic) offered by the Consorci d'Administración Oberta de Catalunya and this is precisely the means of official publication of its announcements in accordance with its regulatory regulations."*
- That *"Regarding the period that the information must be published, the rule that orders its publication says nothing about it. In addition, the mandate of the union representatives is still valid since the union elections were held on March 22, 2018 and in accordance with article 67.3 of the Workers' Statute "The duration of the mandate of the staff representatives and the members of the Company Committee will be four years old.
The publication of the results of the electoral process, according to Diligence issued by the eTAULER application, took place from June 28, 2018."*

Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Authority Catalan Data Protection Agency, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the director of the Catalan Data Protection Authority.

2. Based on the account of facts that has been set out in the background section, it is necessary to analyze the reported facts that are the subject of this file resolution.

It is necessary to start from the premise that, the object of the complaint is the publication in the e-Board of (...), of the document *"Composition Company Committee Consortium of the (...) root the elections held on March 22, 2018"*, which contains the personal data of the different people who had been chosen as representatives of the staff workers

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employment of (...), without their prior consent. The data published in the referenced document are the names and surnames, as well as the initials of the unions to which the chosen representatives belong, among which is the person making the complaint here.

First of all, it should be noted that personal data is any information relating to identified or identifiable natural persons, in accordance with article 4.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (hereafter, RGPD). Thus, the publication of the results of the trade union elections of the works committee of (...), in effect, constitutes a treatment of personal data, and like any treatment of personal data, the principles relating to the treatment provided for must be respected in article 5 of the RGPD, and in particular, for this specific case, the principle of legality (art.5.1.a) and the principle of data minimization (art.5.1.c). In addition to all this, it must also be taken into account that the published data reported on the trade union affiliation of the people chosen as representatives, these being special categories of personal data (art. 9 RGPD).

2.1. On the principle of legality

In advance, it should be noted that the reported entity, the (...), is considered a public administration for the purposes of Law 39/2015, of October 1 (henceforth, LPACAP) , and Law 40/2015, of October 1, (hereinafter, LRJSP). This is because the reported entity is a Consortium, and article 2.3 of LPACAP and article 3.3 of LRJSP, when they establish the entities that have the consideration of public administrations, include public bodies and public law entities linked or dependent on public administrations. And precisely, article 118 of the LRJSP, makes it clear that: *"consortia are entities under public law, with their own and distinct legal personality, created by several public administrations or entities that are part of the institutional public sector, among themselves or with the participation of private entities, for the development of activities of common interest to all within the scope of their powers"*.

Having established the above, the RGPD provides that all processing of personal data must be lawful (article 5.1.a)) and, in this sense, establishes a system for legitimizing the processing of data which is based on the need for any of the legal bases established in its article 6.1. In this respect, taking into account that the controversial publication on the e-Board of (...), was made without the consent of those affected, it is necessary to analyze whether such treatment is covered by any of the other authorizations provided for in article 6 of the RGPD.

In this particular case, it should be noted that article 6.1.c) of the RGPD legitimizes the processing of data when *"the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment"*. However, as follows from article 6.3 of the RGPD, the basis of the treatment indicated in article 6.1 c) must be established by the law of the European Union or by the law of the Member States that applies to the data controller. This reference to the internal law of the member states referred to in the article

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6.3 of the RGPD requires, therefore, that the development rule, to be a fundamental right, has the status of law (Article 53 CE).

In this sense, the Royal Legislative Decree 2/2015, of October 23, which approves the revised text of the Workers' Statute Law (hereinafter, ET), establishes in its article 75.5, on "*Votation for delegates and company committees*", the following: "*5. The president of the table will send copies of the act of scrutiny to the employer and the auditors of the candidacies, as well as to the elected representatives. The result of the vote will be published on the bulletin boards.*" This legal provision seems, a priori, to legitimize the publication of the personal data of the representatives who would have been elected in the trade union elections relating to the works committee of (...).

Likewise, and in development of this legal provision, the Royal Decree 1844/1994, of September 9, is pronounced, which approves the Regulations for elections to bodies representing workers in the company (hereinafter, RD 1844/1994), which in its article 11, relating to the "*Publication of the voting record*", states that "*The result of the vote will be published on the notice boards within twenty-four hours following the completion of the drafting of the act of scrutiny.*"

So, from the regulations set out, it can be inferred that the fulfillment of the legal mandate makes it necessary to publish the results of the elections on the notice board, and finds in the legal basis provided for in article 6.1.c) RGPD, the legitimacy for said publication.

However, it is necessary to mention the fact that, certainly, the (...) would have processed personal data of special categories (art. 9 RGPD), since the workers' representatives were identified with the controversial publication winners of the elections for members of the Company Committee, through first and last names and trade union affiliation. Regarding this, however, it should be emphasized that, in the context of an election of members of the Works Committee, it is inferred that the data to which mention has been made are data that the affected persons themselves would have obviously made public at the time of presenting their candidacy, and therefore, prior to their election. In this sense, article 9.2 of the RD 1884/1994, establishes that "*In the elections to members of the Comité de Empresa in each list of candidates must appear the acronym of the union, electoral coalition or group of workers that present it*". For this reason, it is considered that the data relating to the trade union affiliation of the people who were elected in the referenced elections were already available to the different people who would have participated in said elections.

In this sense, it should be noted that art. 9.2.e) of the RGPD lifts the general prohibition of processing personal data of special categories (trade union membership, health, sexual orientation, etc.), when the interested party had made them manifestly public, as would have happened here regarding the personal union membership data of the people who would have submitted candidacy for the works committee elections.

Carrer Rosselló, 214, esc. A, 1st 1st
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It should also be noted that art. 9.2.b) of the RGPD also lifts the general prohibition of processing personal data of special categories when the processing is necessary *"for the fulfillment of obligations and the exercise or specific rights of the person in charge of the treatment or of the interested party in the field of labor law and social security and protection, to the extent that it is authorized by the Law of the Union of the States members or a collective agreement under the law of the Member States that establishes adequate guarantees in respect of the fundamental rights and interests of the interested party"*, as would be the case here, that the publication of the results of the works committee elections provided for by law (ET).

2.3 On the principle of minimization

In accordance with the principle of minimization of personal data, established in article 5.1.c) of the RGPD, personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. In other words, only those data that are necessary to achieve the intended purpose can be processed.

As has been said, in the case of the controversial publication of the document *"Composition Company Committee Consortium of the (...) root elections held on March 22, 2018"*, the data contained therein was limited to the name and surnames and union affiliation of the union representatives elected in said elections. In this regard, it should be noted that article 12.2 of RD 1844/1994, when it regulates the attribution of electoral results, determines that the results will be attributed to the union when the candidate has presented himself in the elections under his legal name or abbreviations. Therefore, the same DL 1844/1994 when it regulates the form of attribution of the results, which must then be published in accordance with the legal mandate of the ET (art.75) determines the need for them to be recorded, the references to the union to which they belong, the elected candidates.

That being the case, it must be borne in mind that in the present case, the purpose that justifies the need to publish the data of the trade union representatives who have won a place on the works council is none other than to publicize the result of the elections held, since workers must be able to identify the people who represent them within said collegiate body, as well as, in their case, the union organization to which they belong. All this, without prejudice to the possibility that transparency in the result of the scrutiny is also necessary due to eventual challenges to the results.

For this reason, it is considered that the personal data contained in the controversial publication were adequate under the prism of the principle of data minimization, since these were limited to the personal data necessary and sufficient to identify the people who have been chosen in the elections: first and last name, and the union abbreviations under which they act as representatives.

3. In accordance with everything that has been set out in the 2nd legal basis, and since during the actions carried out in the framework of the previous information it has not been accredited, with respect to the facts that have been addressed in this resolution related to the principles of legality and

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minimization, the commission of any of the offenses provided for in the legislation on data protection, its archive should be agreed.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 51/2019, relating to the Consortium of those of the (...).
2. Notify this resolution to the Consortium of (...) and the person making the complaint.
3. Order the publication of the resolution on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the persons interested parties may file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after their notification, in accordance with what provided for in article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, governing the contentious administrative jurisdiction.

Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,