

## File identification

Archive resolution of the previous information no. IP 257/2022, referring to the College of Economists of Catalonia.

## Background

1. On 11/07/2022, the Catalan Data Protection Authority received, by transfer from the Spanish Data Protection Agency, a letter from a person for which he made a complaint against the College of Economists of Catalonia (hereinafter, CEC), due to an alleged breach of Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons by regarding the processing of personal data and the free movement of such data (hereafter, RGPD).

The complainant explained that, on 30/05/2022, the electoral board set up for the elections of the representative of the workers of the CEC, of the demarcation of Barcelona, published the census of workers, which contained personal data ( ID, date of birth, seniority and professional category). Said census would have been published, without the authorization of the people affected, on the notice board on the 5th floor of the collegiate headquarters, where not only the workers but also people outside the CEC would have access. He added that the aforementioned data were unnecessary to allow the unions to send information and participate in the electoral process.

The reporting person provided a copy of the following document: “ *Model 2.2. Staff delegates. labor census Elections for workers' representatives in the company* ” and various screenshots from the CEC website.

2. The Authority opened a preliminary information phase (no. IP 257/2022), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to 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 were susceptible to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 02/27/2023 the reported entity was required to report on whether, at the CEC headquarters, a census of workers was made public on a notice board or on a another visible place, in the framework of the elections of representatives of the workers of the said body in 2022. Likewise, he was asked to inform, in case he answered affirmatively to the preceding question, under what circumstances the census of workers, for how long it was accessible, how many people it affected and what personal data it contained, as well as providing a copy of said census, if available. Finally, he was asked to report on which people employed by the CEC had access to said census and whether, in the place where it was published, it was also visible to third parties external to the CEC, as well as to report on the legal basis that would enable the processing and public exposure of the data.

4. On 03/21/2023, the CEC responded to the aforementioned request through a letter in which it stated the following:

— That, in accordance with the provisions of art. 74 of the Workers' Statute (hereinafter, TRLET), on the occasion of the call for the elections of representatives of the organization's

workers, to be held on 06/01/2022, the electoral board made public the labor census on the CEC notice board.

— That said census was drawn up in accordance with art. 6 of RD 188/1994, of September 9, which approves the Regulations for elections to representative bodies of workers in the company.

— That the labor census was published on the notice board located on the 5th floor of the collegiate headquarters, where only CEC workers can access using an access key.

— That the aforementioned census was accessible from 05/30/2022 to 06/02/2022 and affected 21 people.

— That, as regards the content of the census, it only included the data provided for in model no. 2 of the annex to the Regulation of elections to bodies representing workers in the company, approved by RD 188/1994, of September 9, and which becomes the official model of the Department of Business and Labor of the Generalitat, that is to say: "name, sex, ID, date of birth, seniority in the company and professional category."

— That only the people who were part of the CEC staff, who had to exercise their right to vote, had access to the census in question. He added that the room where the bulletin board was is restricted to school staff and can only be entered with a password.

— That the legal basis enabling the processing and public display of the data was art. 6 of RD 1844/1994, of September 9, which approves the Regulations for elections to representative bodies of workers in the company. He adds that said article refers to the official census model of the Department of Business and Labor.

— Finally, he mentions that during the electoral process compliance with the law was ensured and that they are not aware of any incidents.

## **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 Catalan Authority of Data Protection, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the Director of the Authority is competent to issue this resolution Catalan Data Protection Authority.

2. Based on the background story, it is necessary to analyze the reported events that are the subject of this archive resolution.

The complainant complained that the CEC had made public the personal data (name and surname, ID, sex, NIF, date of birth, seniority and professional category) of several workers by publishing the labor census on a notice board located on the 5th floor of the collegiate headquarters - which according to the complainant is a place where people outside the CEC can access -, on the occasion of the holding of the elections for representatives of the workers in the company. He also complained that the mentioned data were "unnecessary to allow the union to send information and participate in the electoral process".

Regarding the legal basis that would allow the publication of the aforementioned data, it is necessary to refer to article 74 of the TRLET, which establishes:

*" Article 74. Functions of the table.*

*1. Once the company has been notified of the intention to hold elections, the company, within seven days, must convey it to the workers who must form the table and also to the workers' representatives, and must let the promoters know at the same time. The electoral board must be constituted, formally, by means of an act granted for this purpose, on the date set by the promoters in*

*their communication of the intention to hold elections, which must be the start date of the electoral process.*

*2. If it is about elections to staff delegates, the employer, within the same period, must send to the members of the electoral board the labor census, which must be adjusted, for these purposes, to the standardized model . The electoral board must fulfill the following functions:*

- a) He must make public among the workers the labor census with indication of those who are voters.*
- b) It must set the number of representatives and the deadline for the submission of candidacies.*
- c) Must receive and announce the candidacies that are presented.*
- d) Must indicate the voting date.*
- e) He must draw up the minutes of the scrutiny within a period not exceeding three calendar days .*

In the same sense, article 6 of RD 1844/1994, of September 9, which approves the Regulations for elections to employee representative bodies in the company, establishes the following, with regard to the publication and content of the labor census:

**" Article 6. Labor census.**

*1. The labor census will conform to model number 2 of the annex to this Regulation.*

*2. In the elections for Personnel Delegates and members of the Company Committee, the company is notified of the purpose of holding elections for its promoters, it, within seven days, will transmit said communication to the workers who must form the table and at the same time send to the members of the electoral table the labor census, indicating the workers who meet the age and seniority requirements, in the terms of article 69.2 of the Workers' Statute, necessary to hold the status of electors and eligible.*

*The polling station will make public, among the workers, the labor census with an indication of who are electors and eligible according to article 69.2 of the Estatuto de los Trabajadores, which will be considered for voting purposes as a list of electors.*

*When it comes to elections for Works Councils, the list of electors and eligibles will be published on the notice boards for a period of no less than seventy-two hours.*

*3. When it comes to companies or workplaces with 50 or more workers, the number, two surnames, gender, date of birth, national identity document, category or professional group and seniority in the company must be stated in the labor census of all workers, distributed in a school of technicians and administrators and another of specialists and unqualified, and a third school, if this had been agreed in the Collective Agreement, in accordance with the provisions of article 71.1 of the Workers' Statute.*

*4. The company will also provide in the list of the labor census the list of those workers hired for a term of up to a year, stating the duration of the agreed contract and the number of days worked up to the date of the call for the election.*

*5. (...)"*

Thus, in the first section of article 6 of RD 1844/1994, of September 9, which approves the Regulations for elections to representative bodies of workers in the company, a reference is made to the model no. 2 of the Annex of the same legal text, which, for what is of interest here, refers to the following data, which are those that must be included in the aforementioned labor census: first and last name, sex, DNI, date of birth, seniority in the company and professional category , so that it is distributed in two lists, one that refers to

permanent workers or those who have a contract of more than one year, and another that would include workers who have a contract of less than 'year.

It turns out, then, that the labor census published by the CEC deals with the same data as provided for in the aforementioned sectoral regulations, although the form used would correspond to the standardized model of the Department of Business and Work, of the Generalitat of Catalonia, called " 2.2. *Staff delegates. labor census Elections for workers' representatives in the company* . Said census also includes a final section dedicated to " *Basic information on data protection for the treatment "Union elections"* , with the following text:

**" Responsible for the treatment :** *General Directorate of Labor Relations, Self-Employment, Safety and Occupational Health of the Department of Business and Work.*

**Purpose :** *the purpose is to manage the registration of trade union election processes for representatives of working personnel and civil servants, of contestations, of resignations and dismissals of representatives.*

**Rights of interested parties :** *You can request access, rectification, deletion or limitation of the processing of your data. You can also object to processing. Procedure to exercise your rights at [http://empresa.gencat.cat/ca/departament/proteccio\\_de\\_dades/drets/](http://empresa.gencat.cat/ca/departament/proteccio_de_dades/drets/) Additional information on this treatment: <https://treball.gencat.cat/ca/informacio/proteccio-dades/tractaments/listat-unitats/relacions-laborals/sindicals/> ”.*

Thus, with regard to the legality of the treatment, article 6 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, provides the following:

**" Article 6**  
**Legality of the treatment**

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 of 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. The provisions in letter f) of the first paragraph shall not apply to the processing carried out by public authorities in the exercise of their functions.*

2. (...).

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*

b) *the law of the Member States that applies to the person responsible for the treatment.*

*The purpose of the treatment must be determined in said legal basis or, in relation to the treatment referred to in section 1, letter e), it will be necessary for the fulfillment of a mission carried out in the public interest or in the exercise of conferred public powers to the person responsible for the treatment. Said legal basis may contain specific provisions to adapt the application of the rules of this*

*Regulation, among others: the general conditions that govern the legality of the treatment by the person in charge; the types of data object of treatment; the interested parties affected; the entities to which personal data can be communicated and the purposes of such communication; the limitation of the purpose; the periods of data conservation, as well as the operations and procedures of treatment, including the measures to guarantee legal and equitable treatment, as well as those relating to other specific situations of treatment in accordance with chapter IX. The Law of the Union or of the Member States will fulfill an objective of public interest and will be proportional to the legitimate aim pursued ."*

In accordance with all of the above, it should be considered that the publication of the labor census among the workers of the CEC was protected by the legal basis of the first section of article 6 of RD 1844/1994, of September 9, by which the Regulations for elections to representative bodies of workers in the company are approved, without prejudice to the fact that interested persons may request access, rectification, deletion or limitation of the processing of their personal data .

However, it is also appropriate to analyze whether people outside the CEC workforce had access to said publication, as the complainant complained. With regard to this end, the reported entity alleged that said census was only accessible to people who were part of the entity's workforce, who had to exercise their right to vote, as the bulletin board was located in a location restricted to CEC staff that can only be accessed through the use of a password or access key.

Well, apart from the statements of the person making the complaint, there is no other element that corroborates that the CEC published the census in a place accessible to people outside the workforce of the said entity. Consequently, the principle of presumption of innocence is applicable here, since there is no evidence to prove the commission of an offense by the reported entity. In this sense, article 53.2.b) of Law 39/2015, of October 1, recognizes the right " *To the presumption of non-existence of administrative responsibility until proven otherwise* ".

**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, in relation to the facts that have been addressed in this resolution, no fact that could be constitutive of any of the infractions provided for in the legislation on data protection, should be archived.

Article 10.2 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, provides that "(... ) *no charges will be drawn up and the dismissal of the file and the archive of actions when the proceedings and the tests carried out prove the non-existence of infringement or responsibility. This resolution will be notified to the interested parties*" . And article 20.1) of the same Decree determines that the dismissal proceeds: " a) *When the facts do not constitute an administrative infraction; b) When there are no rational indications that the facts that have been the cause of the initiation of the procedure have occurred; (...).*"

Therefore, I resolve:

1. File the previous information proceedings number IP 257/2022, relating to the College of Economists of Catalonia.
2. Notify this resolution to the Association of Economists of Catalonia 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,

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