Order 10/2020, on Data Protection in the Ambits of Online Teaching and Online Assessment

Order 6/2020, to end the 2019-2020 academic year in the context of the COVID-19 crisis, approved by the Governing Council of the UAB at its online session on 16 April 2020, aims to adapt the academic year to the state of alarm declared throughout Spain, due to the coronavirus, so that students who are able to complete their studies can do so, and so that all other students can finish the current academic year.

In this respect, this order terminates all face-to-face teaching in the second semester of the 2019-2020 academic year and establishes that all pending teaching activity must continue in virtual format until the end of this said academic year. In anticipation that the state of emergency will not allow any face-to-face assessment activity to be carried out in the second semester of the 2019-2020 academic year, this order also establishes that the UAB teaching staff must design a non-attendance-based assessment plan that also includes the processes of reassessment.

Additionally, Order 7/2020 on the completion of the 2019-2020 academic Year for UAB-specific postgraduate studies, approved by the UAB Governing Council at its online session on 16 April 2020, aims to adapt the development of the 2019-2020 academic year to ensure maintenance of quality for all postgraduate activities and for their completion, as well as to guarantee that students are able to complete the academic year. In this respect, it provides for the redesigning of teaching activity in order to adapt this to the current situation, transforming it into online teaching and/or prioritizing those contents deemed essential for the acquisition of competences.

These orders highlight the need to use technological tools that may be at variance with current legislation on the protection of personal data.

The object of this current order is therefore to indicate the means by which data protection can be ensured whilst carrying out both online teaching and online assessment.

1. Online Teaching

a. Student Consent

The processing of students’ personal data involved in online teaching is legitimised through fulfilment of an activity in the public interest or through the exercise of public powers, in accordance with article 6.1.e of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (GDPR). Consequently, **IT IS NOT NECESSARY TO OBTAIN STUDENTS’ CONSENT** to carry this out, although
students must be notified of the information set out in Article 13 of the GDPR.

In this regard, teaching staff responsible for online teaching must inform the students in their subject of the following information, in the e-mail (or other application used for class communication) containing the link to the online-class session:

In accordance with article 13 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (GDPR), your personal data will be processed by the Universitat Autònoma de Barcelona in order to carry out the teaching sessions corresponding to [name of subject], corresponding to the [department/faculty], in the [2019-20/2020-2021] academic year.

Processing of your personal data is legitimised through fulfilment of an activity in the public interest or through the exercise of public powers (article 6.1.e GDPR, in relation to Spanish Statutory Law 6/2001, of 21 December 2001, on universities).

On a general basis, your personal data will be kept for as long as the purposes of processing may require, to guarantee the exercise and defence of those rights deriving from this said processing, and during the periods of time imposed by specific legislation, or by the internal regulations of the UAB.

Your name and surname(s) or the session identifier will be visible to the other participants throughout the session. Additionally, your image and voice will be accessible to the other participants in the session in the event that you have activated your microphone or camera.

Your personal data will not be transferred to third parties or to any other recipient except in those cases provided for by law or when this is obligatory.

In accordance with the GDPR, you may exercise the rights of access, rectification, limitation of treatment, suppression, portability, and opposition to the processing of your personal data by sending a request to [teacher’s e-mail address or that of the subject coordinator] or to the Office of the General Secretary, UAB (sec.general@uab.cat).

You may also register a complaint with the Catalan Data Protection Agency and address any enquiries that you consider relevant to the UAB delegate for data protection.

b. Recording Videoconferences

Holding videoconferences for carrying out online teaching should not ineluctably mean that the sessions are recorded; in principle, recordings of this type would constitute data processing that is not relevant, not appropriate and also excessive in relation to the purposes of such processing, and would contravene the principle of minimisation (Article 5.1.c GDPR).

However, if the teaching staff responsible for online teaching considers it essential to record the teaching sessions, this requirement must be justified,
and students must be duly informed of the fact. Additionally, students must be given the possibility of disabling the audio or video option in the corresponding application or device if they allege any personal circumstances for doing so, in exercise of the right of opposition recognised in article 21 of the GDPR.

Students are not permitted to record the sessions, whether directly or indirectly, partially or totally; additionally, they are not permitted to publish the said sessions on any websites, social networks, etc.

As much as possible, any interference with people’s privacy must be limited; the proportionality of any such interference must be assessed not only in terms of data protection but also as regards any possible illegitimate interference with privacy according to Spanish Statutory Law 1/1982, of 5 May 1982, on civil protection of the rights to honour, personal and family privacy and an individual’s personal image. In this sense, students must be informed that, when homes or private spaces are visible and/or are being recorded, they must leave any elements out of sight that they wish to keep private.

Access to the recordings must be restricted to the students of the subject in question and to the corresponding teaching staff, including—if necessary—the subject or degree coordinator.

In this regard, teaching staff responsible for online teaching must inform the students in their subject of the following information, in the e-mail (or other application used for class communication) containing the link to the online-class session:

In accordance with Article 13 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (GDPR), your personal data will be processed by the Universitat Autònoma de Barcelona in order to carry out the teaching sessions corresponding to [name of subject], corresponding to the [department/faculty], in the [2019-20/2020-2021] academic year.

Processing of your personal data is legitimised through fulfilment of an activity in the public interest or through the exercise of public powers (article 6.1.e GDPR, in relation to Spanish Statutory Law 6/2001, of 21 December 2001, on universities).

On a general basis, your personal data will be kept for as long as the purposes of processing may require, to guarantee the exercise and defence of those rights deriving from this said processing, and during the periods of time imposed by specific legislation, or by the internal regulations of the UAB.

Your name and surname(s) or the session identifier will be visible to the other participants throughout the session. Additionally, your image and voice will be accessible to the other participants in the session in the event that you have enabled your microphone or camera.

Your personal data will not be transferred to third parties or to any other recipient except in those cases provided for by law or when this is obligatory.

Please be informed that this session will be recorded for the purpose of
The recordings will not be transferred to third parties or to any other recipient, except for the students in the group who may need them and to those members of the teaching and research staff who may need access to the recordings to comply with their teaching duties. Access to the recordings must be restricted to the students of the subject in question and to the corresponding teaching staff, including—if necessary—the subject or degree coordinator.

Students are not permitted to record the sessions, whether directly or indirectly, partially or totally; additionally, they are not permitted to publish the said sessions on any websites, social networks, etc.

To avoid any interference with your privacy, please be informed that, when homes or private spaces are visible and/or are being recorded, you must leave any elements out of sight that you wish to keep private.

In accordance with the GDPR, you may exercise the rights of access, rectification, limitation of treatment, suppression, portability, and opposition to the processing of your personal data by sending a request to [teacher’s e-mail address or that of the subject coordinator] or to the Office of the General Secretary, UAB (sec.general@uab.cat).

You may exercise your right of opposition under Article 21 of the GDPR if, for reasons relating to personal circumstances, you do not wish your identity to be recognised. In such an event, you can disable the audio or video option on the application or device being used.

Additionally, you may also register a complaint with the Catalan Data Protection Agency and address any enquiries that you consider relevant to the UAB delegate for data protection.

2. Online Assessment

a. Recommendations on Assessment

Since online tests and examinations may have implications for the right to privacy and the protection of student data, it is recommended that forms and procedures be put in place to strictly limit this intrusion, which, while legitimate, should be carried out with as little impact as possible.

b. Student Consent

The processing of students’ personal data involved in online assessment is legitimised through fulfilment of an activity in the public interest or through the exercise of public powers, in accordance with article 6.1.e of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (GDPR). Consequently, **IT IS NOT NECESSARY TO OBTAIN STUDENTS’ CONSENT** to carry this out, although students must be notified of the information set out in Article 13 of the GDPR.
c. Measures to Control Identity and Tests/Examinations

In general terms, Spanish Royal Decree 1791/2010, of 30 December 2010, should be taken into account. This decree approves the University-Students' Statute, which, in its article 13, establishes students’ obligations, among which are the obligation to cooperate in the activities of the university, responsible participation or contribution to improving of the functioning of the university.

As a general criterion, except in the case of oral tests or examinations, the continuous recording of the student throughout the entire session is considered by the data-protection authorities to be an excessive and disproportionate processing of personal data. At all events, however, a close-up recording of the student at the beginning and end of the session for identification purposes, as well as a close-up recording of the examination papers, if any, is considered legitimate in order to reinforce the identification and authentication process. The student may also be identified by displaying his/her ID card or other identification document (e.g., a NIU card), showing only the first and last names and photograph, but concealing the remaining information.

Additionally, measures must be put in place to guarantee, on the one hand, that the test/examination submitted by the student is the same one that he/she has actually taken, and that this test is not modified once it reaches the University’s teaching staff.

Teaching staff responsible for student assessment must decide on the measures of control and identification to be used and must inform the students of these measures. When students have been properly informed of these said measures, the student’s refusal to comply with such measures would render the assessment unviable and would therefore also make it impossible to pass the subject. The teaching staff must also clearly communicate these points to the students.

Furthermore, it must be taken into account that the processing of students’ personal data (image and, where appropriate, voice) deriving from the online assessment session, is obligatory for the purposes of processing (as provided for in article 13.2.e of the GDPR).

Finally, students must be cautioned that they cannot record or broadcast these sessions, either partially or in their totality.

In this regard, teaching staff responsible for online assessment must inform the students in their subject of the following information, in the e-mail announcing the test/examination and that contains the link to the online-assessment session:

In accordance with Article 13 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (GDPR), please be informed that this teaching session will involve the measures set out in the next paragraph in order to guarantee that the assessment test/examination for [name of subject] is correctly carried out.

The control and identification measures to be used in this assessment test/examination are the following: [***]. Please be informed that your refusal to comply with these measures will render your assessment
unviable and will therefore lead to you failing the subject.

On a general basis, your personal data will be kept for as long as the purposes of processing may require, to guarantee the exercise and defence of those rights deriving from this said processing, and during the periods of time imposed by specific legislation, or by the internal regulations of the UAB, and will not be transferred to third parties or to any other recipient except to those members of the teaching and research staff who may need access to such data in order to comply with their teaching and assessment duties.

Students are not permitted to record the sessions, whether directly or indirectly, partially or totally; additionally, they are not permitted to publish the said sessions on any websites, social networks, etc.

You may exercise your right of opposition under Article 21 of the GDPR if, for reasons relating to personal circumstances, you do not wish your identity to be recognised. In such an event, you can disable the audio or video option on the application or device being used.

Additionally, you may also register a complaint with the Catalan Data Protection Agency and address any enquiries that you consider relevant to the UAB delegate for data protection.

d. Recording Online Assessments

In the case of oral tests or examinations, it is considered necessary to record the student continuously throughout the entire session in order to guarantee the student’s right to an objective assessment and to a review of the grades awarded, without such a recording being deemed an excessive or disproportionate processing of personal data. Information will be provided and guarantees will be given that these recordings will be used for the exclusive purpose of carrying out the task of assessment, that they will not be transferred to third parties and that they will not be subject to disclosure or publication on the University’s website or on the websites of its centres and departments, nor—evidently—to any public dissemination. The same criteria will also be applied in the case of other non-oral tests or examinations for which it is considered that, due to their characteristics, recording is required.

Teaching staff responsible for student assessment must decide on the measures of control and identification to be used and must inform the students of this.

When oral tests of examinations are not involved, the teaching staff responsible for student assessment must decide whether, in justified cases, they will record the student throughout the entire session, and, in such a case, must inform the students of this. When this need to record has been duly informed of, the student’s refusal to comply with such measures would render the assessment unviable and would therefore also make it impossible to pass the subject. The teaching staff must also clearly communicate these points to the students.

Furthermore, it must be taken into account that the processing of students’ personal data (image and, where appropriate, voice) deriving from the online assessment session, is obligatory for the purposes of processing (as provided
for in article 13.2.e of the GDPR).

Finally, students must be cautioned that they cannot record or broadcast these sessions, either partially or in their totality.

In this regard, teaching staff responsible for online teaching must inform the students in their subject of the following information, in the e-mail announcing the test/examination and that contains the link to the online-assessment session:

_In accordance with Article 13 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (GDPR), please be advised that this teaching session will be recorded in order to guarantee that the assessment test/examination for [name of subject] is correctly carried out._

_The recordings will not be transferred to third parties or to any other recipient except to those members of the teaching and research staff who may need access to them in order to comply with their teaching and assessment duties. Furthermore, they will not be subject to disclosure or publication on the University’s website or on the websites of its centres and departments, nor—evidently—to any public dissemination._

_Students are not permitted to record the sessions, whether directly or indirectly, partially or totally; additionally, they are not permitted to publish the said sessions on any websites, social networks, etc._

_Please be informed that your refusal to comply with these measures of identification and/or control as well as with the recording of this assessment session will render your assessment unviable and will therefore lead to you failing the subject._

_You may exercise your right of opposition under Article 21 of the GDPR if, for reasons relating to personal circumstances, you do not wish your identity to be recognised. In such an event, you can disable the audio or video option on the application or device being used._

_Additionally, you may also register a complaint with the Catalan Data Protection Agency and address any enquiries that you consider relevant to the UAB delegate for data protection._

**3. Tools for Online Teaching and Online Assessment**

In order to carry out online activities, use of the tools made available to the university community by the UAB Computer Service is strongly recommended. These tools include the virtual campus, remote-working tools, institutional e-mail, the Microsoft Office 365 suite, etc. In the event of using tools other than those provided by the UAB, it is necessary to ensure that these guarantee security as regards both data protection and the technical requirements established for public-administration information systems within the National Security Scheme.