 File No.: EXP202100068

RESOLUTION OF SANCTIONING PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and based on

to the following

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claiming party), on June 7, 2021,

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the part

claimed). The reasons on which the claim is based are the following:

It states that from the mobile phone number ***TELEPHONE.1, the claimed party

disseminated through WhatsApp, without your knowledge or consent, your data

personal to a group of 31 people.

The data disseminated includes names, surnames, ID number, seniority, date of

birth, number of votes and union affiliation.

Together with the claim, it provides two files in JPG (document disclosed with the

data propagated in said WhatsApp group) and an audiovisual file where

prove said violation.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights (in

forward LOPDGDD), said claim was transferred to the FEDERATION

STATE OF SERVICES, MOBILITY AND CONSUMPTION OF THE UGT (FESMC-UGT),

to proceed with its analysis and inform this Agency within a month,

of the actions carried out to adapt to the requirements established in the

data protection regulations.

The transfer, which was carried out by means of electronic notification in accordance with the regulations

established in Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (hereinafter, LPACAP), was received on date

July 22, 2021, as stated in the certificate in the file.

On July 29, 2021, this Agency received a written response

indicating that there is no authorization from FeSMC-UGT for the creation of

WhatsApp groups for the development of union action, that the documentation

that is provided together with the letter of transfer of claim and request for information,

corresponds to persons who hold unitary representation, which is of a

elective and whose legal regime is contained in Chapter II of the Statute

from the workers; therefore representation of a different nature from the trade union, and

that no request for the exercise of rights has been received from the

complainants.

THIRD: On August 20, 2021, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in

matter, by virtue of the functions assigned to the control authorities in the

article 57.1 and the powers granted in article 58.1 of the Regulation (EU)

2016/679 (General Data Protection Regulation, hereinafter GDPR), and

in accordance with the provisions of Title VII, Chapter I, Second Section, of the

LOPDGDD, having knowledge of the following extremes:

INVESTIGATED ENTITY

STATE FEDERATION OF SERVICES, MOBILITY AND CONSUMPTION OF THE UGT

(FESMC-UGT) with NIF G87589909 and address at AVDA. OF AMERICA 25, 2ª

PLANT – 28002, Madrid (Madrid).

B.B.B., with NIF ***NIF.1, and address at ***ADDRESS.1.

The Data Inspectorate has verified that the owner of the line from which they were sent

***TELEPHONE.1 messages were associated with Xfera Móviles.

Xfera representatives inform that the owner of this line is B.B.B., ***NIF.1,

with address at ***ADDRESS.1.

B.B.B. that provides information regarding:

 Reason for which the personal data of D.A.A.A. has been shared, with

ID ***NIF.2, D.C.C.C., with D.N.I. ***NIF.3 and Don D.D.D., with D.N.I.

***NIF.4 in a WhatsApp group called "(...)"

 Source of shared data

 Legal authorization or consent of those affected to share their data

personal

The first of these requirements has the following history:

1st delivery attempt on 02/17/2022 was Absent.

2nd delivery attempt on 02/18/2022 was Absent.

Notice was left in the mailbox.

The second:

1st delivery attempt on 05/13/2022 was Absent.

2nd delivery attempt on 05/16/2022 has been Absent. Notice was left in the mailbox.

No response has been received to date.

FIFTH: On June 24, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

for the alleged infringement of article 5.1.c) of the GDPR, typified in article 83.5 of the

GDPR.

The initiation agreement was mailed and returned by the Postal Service by

"absent in distribution", proceeding to its publication in the Official State Gazette, in

dated July 29, 2022, in accordance with the provisions of article 44 of the Law

39/2015, of October 1, of the Common Administrative Procedure of the Administrations

Public tions.

SIXTH: Notified the aforementioned start agreement in accordance with the rules established in

Law 39/2015, of October 1, on the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP) and after the period granted

for the formulation of allegations, it has been verified that no allegation has been received

any by the claimed party.

Article 64.2.f) of the LPACAP -provision of which the claimed party was informed

in the agreement to open the procedure - establishes that if no

arguments within the established term on the content of the initiation agreement, when

it contains a precise pronouncement about the imputed responsibility,

may be considered a resolution proposal. In the present case, the agreement of

beginning of the disciplinary file determined the facts in which the

imputation, the infringement of the GDPR attributed to the defendant and the sanction that could

impose. Therefore, taking into consideration that the claimed party has not

made allegations to the agreement to start the file and in attention to what

established in article 64.2.f) of the LPACAP, the aforementioned initiation agreement is

considered in the present case resolution proposal.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: It is on record that on June 7, 2021, the claimant filed

claim before the Spanish Data Protection Agency, since the party

claimed had disclosed information and data of a personal nature to third parties, without the

express consent of the owner of said data.

SECOND: Provide two files in JPG (document disclosed with the data

propagated in said WhatsApp group) and an audiovisual file where it proves

said infraction.

FUNDAMENTALS OF LAW

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, Protection of Personal Data and Guarantee of

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Digital Rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

Article 5.1 c) of the GDPR

Since the use of WhatsApp is common for communication and sending

documents or images of documents, it must be taken into account to whom they are sent

WhatsApp messages when personal data is included in said messages,

given that if these personal data do not belong to the person who sends the message or the

recipient of the message, there must be a justification for sending to third parties

personal data by WhatsApp.

The GDPR establishes in article 5 the principles related to data processing

Personalities that need to be considered:

"The personal data will be:

(…)

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which

that are processed ("data minimization")

This article enshrines the principle of data minimization in the treatment of

personal information. It assumes that said treatment is adjusted and proportional to the

purpose to which it is directed, and the processing of excessive data must be restricted

or proceed to the deletion of these.

Regarding the need to process personal data, it can be said that

any data processing implies per se and starting, the restriction of the right

essential, when the collection and disposal of these by the person in charge takes place

who will work with them.

According to jurisprudence, due to the affectation that the processing of personal data

supposes for a series of fundamental rights, the limitation of the right

fundamental to the protection of personal data must be strictly necessary.

This implies that, if the achievement of the intended purposes can be carried out without

processing of personal data, this route will be preferable and it will mean that it is not

necessary to carry out any data processing, which will mean that such right,

With the limitations that it entails, it would not be in contention, since there are no data. The collection,

storage and use constitutes per se a limitation of the right of protection of

data that must comply with the regulations. This therefore requires first of all analyzing and

ensure that data collection is necessary for the stated purpose or

intended and that it is proportional.

In the specific case under review, compliance with the principle of minimization

would require identifying the specific data that must be communicated according to the

purpose, as well as limiting them to those strictly necessary for their adequate

communication via WhatsApp. Therefore, in relation to the minimization and necessity

of the treatment, there are less harmful alternatives for the protection of personal data.

Workers.

WhatsApp messages were sent with a scope related object

of the company in which the claimed party performs his functions, although

contained data that, by virtue of the aforementioned minimization principle, should not be

figure, as they were irrelevant to the purpose for which said messages were sent.

messages.

Consequently, it is considered that the accredited facts are constitutive of

infringement, attributable to the claimed party, due to violation of article 5.1.c) of the

GDPR.

Classification of the infringement of article 5.1 c) of the GDPR

II

The aforementioned violation of article 5.1.c) of the GDPR supposes the commission of the

offenses typified in article 83.5 of the GDPR that under the heading "Conditions

rules for the imposition of administrative fines" provides:

Violations of the following provisions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of maximum EUR 20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the

total annual global business volume of the previous financial year, opting for

the highest amount:

the basic principles for the treatment, including the conditions for the

to)

consent under articles 5, 6, 7 and 9; (…)”

In this regard, the LOPDGDD, in its article 71 "Infractions" establishes that

"The acts and behaviors referred to in sections 4,

5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result

contrary to this organic law”.

For the purposes of the limitation period, article 72 "Infractions considered very

serious” of the LOPDGDD indicates:

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679,

are considered very serious and will prescribe after three years the infractions that

a substantial violation of the articles mentioned therein and, in particular, the

following:

a) The processing of personal data in violation of the principles and guarantees

established in article 5 of Regulation (EU) 2016/679. (…)”

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Penalty for violation of article 5.1. c) GDPR

IV.

In order to determine the administrative fine to be imposed, the

provisions of articles 83.1 and 83.2 of the GDPR, precepts that state:

"1. Each control authority will guarantee that the imposition of fines

administrative proceedings under this article for violations of this

Regulations indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances of each

individual case, in addition to or in lieu of the measures contemplated in

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature

nature, scope or purpose of the processing operation in question, as well as the number

number of interested parties affected and the level of damages they have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the person in charge or in charge of the treatment to

settle the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, habi-

gives an account of the technical or organizational measures that have been applied by virtue of the

articles 25 and 32;

e) any previous infringement committed by the controller or processor;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in particular

determine whether the controller or processor notified the infringement and, if so, to what extent

gives; i) when the measures indicated in article 58, paragraph 2, have been ordered

given previously against the person in charge or the person in charge in relation to

the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to certification mechanisms.

fications approved in accordance with article 42,

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

as the financial benefits obtained or the losses avoided, directly or indirectly.

mind, through infraction."

For its part, article 76 "Sanctions and corrective measures" of the LOPDGDD

has:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation

(UE) 2016/679 will be applied taking into account the graduation criteria

established in section 2 of said article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

a) The continuing nature of the offence.

b) Linking the activity of the offender with the performance of processing

of personal data.

c) The benefits obtained as a consequence of the commission of the infraction.

d) The possibility that the conduct of the affected party could have led to the

commission of the offence.

e) The existence of a merger process by absorption after the commission

of the infringement, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate

h) The submission by the person in charge or in charge, with character

voluntary, alternative conflict resolution mechanisms, in those

cases in which there are controversies between those and any

interested."

data.

Considering the exposed factors, the valuation that reaches the amount of the fine

is €1,000 for violation of article 5.1. c) of the GDPR.

V

Responsibility

Establishes Law 40/2015, of October 1, on the Legal Regime of the Public Sector, in

Chapter III relating to the "Principles of the Power to sanction", in article 28

under the heading "Responsibility", the following:

"1. They may only be penalized for acts constituting an administrative offense

physical and legal persons, as well as, when a Law recognizes their capacity to

act, the affected groups, the unions and entities without legal personality and the

independent or autonomous patrimonies, which are responsible for them

title of fraud or fault."

Therefore, in accordance with the applicable legislation and assessed the criteria of

graduation of sanctions whose existence has been accredited, the Director of the

Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B., with NIF ***NIF.1, for a violation of article 5.1.c)

of the GDPR, typified in article 83.5 of the GDPR, a fine of 1,000 euros.

SECOND: NOTIFY this resolution to B.B.B. with NIF ***NIF.1.

THIRD: Warn the penalized person that they must make the imposed sanction effective

Once this resolution is enforceable, in accordance with the provisions of Article

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, by means of its income, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, open in the name of the Agency

Spanish Data Protection Agency at the bank CAIXABANK, S.A.. In the event

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date is
between the 1st and 15th of each month, both inclusive, the term to make the payment
voluntary will be until the 20th day of the following or immediately following business month, and if
between the 16th and the last day of each month, both inclusive, the payment term
It will be until the 5th of the second following or immediately following business month.
In accordance with the provisions of article 50 of the LOPDGDD, this
Resolution will be made public once the interested parties have been notified.
Against this resolution, which puts an end to the administrative process in accordance with art. 48.6 of the
LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the
Interested parties may optionally file an appeal for reversal before the
Director of the Spanish Agency for Data Protection within a period of one month from
count from the day following the notification of this resolution or directly
contentious-administrative appeal before the Contentious-administrative Chamber of the
National Court, in accordance with the provisions of article 25 and section 5 of
the fourth additional provision of Law 29/1998, of July 13, regulating the
Contentious-administrative jurisdiction, within a period of two months from the
day following the notification of this act, as provided for in article 46.1 of the
referred Law.
Finally, it is noted that in accordance with the provisions of art. 90.3 a) of the LPACAP,
may provisionally suspend the firm resolution in administrative proceedings if the
The interested party expresses his intention to file a contentious-administrative appeal.
If this is the case, the interested party must formally communicate this fact through
writing addressed to the Spanish Data Protection Agency, presenting it through
of the Electronic Registry of the Agency [https://sedeagpd.gob.es/sede-electronica-
web/], or through any of the other registries provided for in art. 16.4 of the
aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

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