

□ Procedure No.: PS/00086/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Dated June 12, 2019, it has entry in the Spanish Agency of
Data Protection claim against the ASSOCIATION OF TECHNICIANS AND
PROFESSIONALS IN THE AEROSPACE SECTOR (hereinafter ATPSA), with NIF
G82386533 and against the Trade Union Delegate of said Association, whose file number
it is E/12078/2019.

The reason for the claim is because the ATPSA union representative in the company
ITP Aero de Aljavir, has sent the electoral census by email, which includes its
data, to different people with addresses of the company and outside the company, without
Your consent.

Although the claim presented could suppose an infraction to the regulations of
data protection, it is not possible to initiate sanctioning actions as they do not have
tax identification of the alleged perpetrator, a decision to file is issued on December 27,
December 2019.

SECOND: On March 6, 2020, a decision upholding the appeal for
replacement RR/00124/2020, filed by A.A.A., B.B.B., and C.C.C. (hereinafter, the
claimants), requesting the revocation of the resolution, basing it basically on
that the Tax Agency has not been able to provide the CIF of the claimed party: Association of
Technicians and Professionals of the Aerospace Sector that appears in the Statutes deposited
at the Ministry of Labor G82386533.

Thus, as the appellants have provided the NIF, the appeal is estimated and the proceedings are initiated.

appropriate actions through this sanctioning procedure.

THIRD: Despite the transfer to the claimed entity of the claim presented by the claimants, for its analysis as well as to inform this Organism about whether had communicated with the complainants, and the decision adopted in this regard to resolve the situation raised, the respondent has not responded to any of the requirements formulated by the Spanish Data Protection Agency.

FOURTH: On June 3, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD.

FIFTH: On June 15, 2020, the agreement to start this procedure, becoming the same in resolution proposal in accordance with Articles 64.2.f) and 85 of Law 39/2015, of October 1, on Procedure Common Administrative System of Public Administrations (LPACAP), by not carrying out claims within the specified period.

In view of everything that has been done, by the Spanish Agency for the Protection of Data in this procedure are considered proven facts the following,

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FACTS

FIRST: the union representative of the ATPSA in the company ITP Aero de Aljavir, has sent by email the electoral census, in which your data is included, to different people with company and non-company addresses.

SECOND: the respondent has not presented any allegation.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGD recognizes to each authority of control, and according to what is established in articles 47 and 48 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

II

Article 6.1 of the RGD establishes the assumptions that allow the legalization of the treatment of personal data.

For its part, article 5 of the RGD establishes that personal data will be:

“a) processed in a lawful, loyal and transparent manner in relation to the interested party ("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, section 1, further processing of personal data for archiving purposes in the interest public, scientific and historical research purposes or statistical purposes shall not be considered incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken reasonable for the erasure or rectification without delay of the personal data that is inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties during no longer than is necessary for the purposes of processing the personal data; the personal data may be kept for longer periods as long as they are processed exclusively for archival purposes in the public interest, scientific research purposes or

historical or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to the application of the appropriate technical and organizational measures imposed by this Regulation in order to protect the rights and freedoms of the interested party ("limitation of the term of conservation");

f) processed in such a way as to ensure adequate security of the data including protection against unauthorized or unlawful processing and against their accidental loss, destruction or damage, through the application of technical measures or appropriate organizational measures ("integrity and confidentiality").

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The controller will be responsible for compliance with the provisions in section 1 and able to demonstrate it ("proactive responsibility")."

III

In accordance with the available evidence, it is considered that the claimed when sending the electoral census by email, in which the data is included personal information of the claimant, to different people with addresses of the company and outside of the company, supposes the violation of article 5.1 f) of the RGPD, which governs the principles integrity and confidentiality of personal data, as well as the responsibility proactive of the data controller to demonstrate compliance.

IV

Article 58.2 of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with a warning

when the treatment operations have violated the provisions of this

Regulation;

d) order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate, in accordance with

a certain way and within a specified period;

i) impose an administrative fine under article 83, in addition to or instead of

the measures mentioned in this section, according to the circumstances of each case

particular;

v

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for

Data Protection, as a control authority, has a set of powers

corrective measures in the event of a violation of the provisions of the RGPD.

Article 58.2 of the RGPD provides the following:

“2 Each supervisory authority shall have all of the following corrective powers

listed below:

(...)

b) sanction any person responsible or in charge of the treatment with a warning

when the treatment operations have violated the provisions of this

Regulation;”

(...)

“d) order the person responsible or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate, in accordance with

a specified manner and within a specified time;”

“i) impose an administrative fine under article 83, in addition to or instead of

of the measures mentioned in this section, according to the circumstances of each

particular case;”

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Article 83.5.a) of the RGPD establishes that:

“The infractions of the following dispositions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the turnover global annual total of the previous financial year, choosing the highest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;”

In turn, article 72.1 a) of the LOPDGDD, under the heading "Infringements considered very serious provides:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established established in article 5 of Regulation (EU) 2016/679.”

This infraction could be sanctioned with a warning, in accordance with the article 58.2.b) of the RGPD, when collecting through said form basic data of the users and consider that the administrative fine that could fall in accordance with the provided in article 83.5.a) of the RGPD would constitute a disproportionate burden for the claimed, whose main activity is not directly linked to data processing personal, since there is no record of the commission of any previous infraction in terms of

Data Protection.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE THE ASSOCIATION OF TECHNICIANS AND PROFESSIONALS OF THE SECTOR AEROSPACE, with NIF G82386533, for an infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD, in relation to article 72.1 a) of the LOPDGDD, a warning sanction.

SECOND: TO REQUIRE the claimed party so that within one month they certify before this body the fulfillment of:

☐ the adoption of appropriate technical or organizational measures to ensure adequate security regarding the personal data it processes, including the protection against unauthorized or unlawful processing and against loss, accidental destruction or damage, in accordance with article 5.1 f) of the RGPD

THIRD: NOTIFY this resolution to the ASSOCIATION OF TECHNICIAN AND PROFESSIONALS FROM THE AEROSPACE SECTOR.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

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Interested parties may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a period of one month from the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, with 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 two months from the day following the notification of this act, according to the provisions of article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, the firm decision may be provisionally suspended in administrative proceedings if the interested party states its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Registry Electronic Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1 october. You must also transfer to the Agency the documentation that accredits the effective filing of the contentious-administrative appeal. If the Agency did not have knowledge of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, I would consider

The precautionary suspension has ended.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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