

□ File No.: EXP202206413

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

BACKGROUND

FIRST: On November 14, 2022, the Director of the Spanish Agency
of Data Protection agreed to initiate a sanctioning procedure against LISMARTSA, S.L.
(hereinafter, the claimed party), through the transcribed Agreement:

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AGREEMENT TO START THE SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in
based on the following

FACTS

FIRST: On May 11, 2022 A.A.A. and B.B.B. (hereinafter, the part
claimant) filed a claim with the Spanish Agency for the Protection of
Data.

The claim is directed against LISMARTSA, S.L. with NIF B78112679 (hereinafter,
the claimed party).

The claiming party states the following textually: "The company posted on the
electoral census the data of everyone to everyone, by email".

Provide a document entitled: "LISMARTSA, S.L. - EMPLOYEE CENSUS".

The personal data of 74 people are displayed: full name, ID, seniority,
date of birth, category and contract.

It does not accredit the dissemination of said document.

The claim is accompanied by a copy of an email, dated 03/15/2022, with the subject: "LISMARTSA, S.L. WORKS COUNCIL ELECTORAL PROCESS."

In the body of the communication received, each voter is requested to verify that the data contained in the Workers Census are correct.

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2/11

Attach copy of the census of workers.

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), on June 13, 2022, said claim was transferred to the claimed party, to proceed with its analysis and inform this Agency in the period of one month, of the actions carried out to adapt to the requirements provided for in the data protection regulations.

On July 4, 2022, this Agency received a written response indicating that on April 19, 2022, union elections are held in the Company, at have fulfilled the 4 years of legislature of the previous committee.

On March 14, 2022, the polling station was established, beginning the term from the 15 to 17 of the same month to correct errors in the list of voters, which we have previously called the electoral roll. This list, in addition to having found displayed on the bulletin board of the two company centers, they were facilitates all workers via email or WhatsApp to those who do not have it, with the sole purpose of being able to facilitate and expedite the process, since

that many of the workers that make up the workforce, for various reasons, to corroborate it is impossible for them to appear at the headquarters of the Company

In the email sent by the claimed party, the following is detailed:

"In compliance with the provisions of Organic Law 15/1999 of December 13, Protection of Personal Data and REGULATION (EU) 2016/679 OF EUROPEAN PARLIAMENT AND OF THE COUNCIL of April 27, 2016, we inform you that the contact information used for this communication will be included in a file owned by LISMARTSA, S.L. in order to enable the communications through email with the different contacts that it maintains within the exercise of its activity.

Notwithstanding this, you are informed that you may exercise your rights of access, rectification, deletion, portability, limitation or opposition to the processing of your data for which you must address the owner of the file at the following address

*** ADDRESS.1 MADRID attaching a photocopy of the document accrediting identity or by email to ***EMAIL.1.

By virtue of Law 34/2002 of July 11 on Services of the Society of the Information and Email (LSSI-CE), this message and its attachments may contain confidential information, so it is reported that their use is not authorized is prohibited by law.

If you have received this message in error, please notify immediately through this email and delete the original message along with its files attached without reading or recording it in whole or in part."

The entity states that 89.19% of the workforce (66 of 74) have given their consent with the attached data, as well as indicating any variation in them, in order to

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3/11

to correct them and no response is received from the workers

indicating their refusal to have their data appear in the census.

THIRD: On August 11, 2022, in accordance with article 65 of the

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

FUNDAMENTALS OF LAW

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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, 48.1, 64.2 and 68.1 of the

Organic Law 3/2018, of December 5, on the Protection of Personal Data and

guarantee of digital rights (hereinafter, LOPDGDD), is competent to

initiate and resolve this procedure the Director of the Spanish Protection Agency

of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The 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 6.1 of the LOPDGDD establishes that "in accordance with the provisions of the

Article 4.11 of Regulation (EU) 2016/679, it is understood by consent of the affected

any manifestation of free, specific, informed and unequivocal will by the

that he accepts, either by means of a declaration or a clear affirmative action, the treatment

processing of personal data concerning you”.

Article 6.1 of the GDPR establishes the assumptions that allow the use of processing of personal data.

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

"a) treated in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency»);

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

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

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4/11

d) accurate and, if necessary, up-to-date; all measures will be taken

Reasonable reasons for the erasure or rectification without delay of the personal data are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in such a way that the identification of the interested parties is allowed during longer than necessary for the purposes of processing personal data; the personal data may be retained for longer periods as long as

processed exclusively for archiving purposes in the public interest, research purposes scientific or historical or statistical purposes, in accordance with article 89, paragraph 1,

without prejudice to the application of appropriate technical and organizational measures that imposes this Regulation in order to protect the rights and freedoms of the data subject ("retention period limitation");

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

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

By virtue of the facts stated, object of this disciplinary proceeding,

It must be taken into account that Royal Decree 1844/1994, of September 9, by that the Regulation of Elections to representative bodies of the workers in the company, regulates in its article 6 the labor census, providing in its section 1 that "will conform to model number 2 of the annex to this regulation".

Model in which the following data is collected: name and surname; document national identity; sex; birthdate; professional category and seniority in the company.

For its part, article 6.2 of the aforementioned Regulation provides in its last paragraph that "When it comes to elections for Works Councils, the list of voters and eligible will be made public on the bulletin boards for a period of no less than seventy-two hours."

Thus, this Regulation orders the publication of the labor census on the notice boards of announcements, but it does not legitimize the delivery of a copy to the workers through their sending by email.

The communication of personal information constitutes data processing of personal nature and as such must respect the principles of data protection, in

In particular, the principle of data minimization that requires that no processing operations unless absolutely necessary for a certain purpose.

As stated by the European Data Protection Committee in its Guidelines 4/2019 relating to article 25 Data protection by design and by default Version 2.0 adopted on October 20, 2020 "(...) the fact that certain data personal data are necessary for a specific purpose does not imply that they can be www.aepd.es

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5/11

apply all types of processing operations to said data or with any frequency (...)

II

In the present case, it is denounced that the electoral census has made public the data from everyone to everyone, by email.

From the investigative actions carried out, the violation of the principle of minimization of personal data that requires that their treatment be adequate, relevant and limited to what is necessary in relation to the purposes for which are treated.

Therefore, the claimed party would have violated article 5.1 c) of the GDPR, as

It has been indicated in the legal basis II.

IV.

Article 83.5 of the GDPR establishes that infringements of the provisions following will be sanctioned, in accordance with section 2, with administrative fines

EUR 20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount:

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

Article 72.1 a) of the LOPDGDD states that "according to what is established in the Article 83.5 of Regulation (EU) 2016/679, are 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 in violation of the principles and guarantees established in article 5 of Regulation (EU) 2016/679."

V

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

d) order the person in charge or person in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period;

i) impose an administrative fine in accordance with article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;

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11/6

Thus, in attention to what results from the instruction, it will be possible to order the

claimed party that within the designated period proceeds to carry out the actions necessary for the processing of the personal data used to comply with the provisions of the GDPR.

SAW

This infraction can be sanctioned with a fine of a maximum of €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 of greater amount, in accordance with article 83.5 of the GDPR.

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:

"Each control authority will guarantee that the imposition of administrative fines under this Article for infringements of this Regulation indicated in sections 4, 9 and 6 are effective in each individual case, proportionate and dissuasive."

"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

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, and

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

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7/11

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

mind, through infraction.”

Regarding section k) of article 83.2 of the GDPR, the LOPDGDD, article 76,

"Sanctions and corrective measures", provides:

"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) The link between the activity of the offender and the performance of data processing.

personal information.

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 by absorption process subsequent to the commission of the violation, 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) Submission by the person responsible or in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested party.”

In accordance with the transcribed precepts, and without prejudice to what results from the investigation of the procedure, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 76.2 b) of the LOPDGDD, relating to the link between the activity of the infringer and the performance of processing of personal data.

For the purposes of setting the amount of the penalty to be imposed in this case on the entity claimed for an infringement typified in article 83.5 of the GDPR, in an assessment initial, it is necessary to graduate the sanction to be imposed on the defendant and set it at the amount of €3,000 in accordance with article 58.2 of the GDPR

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the GDPR.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency, IT IS AGREED:

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8/11

FIRST: INITIATE SANCTIONING PROCEDURE against LISMARTSA, S.L.

with NIF B78112679, in accordance with the provisions of article 58.2.i) of the GDPR, for the alleged infringement of article 5.1 c) of the GDPR, typified in article 83.5 of the GDPR and for prescription purposes, by article 72.1 a) of the LOPDGDD.

SECOND: APPOINT instructor to C.C.C. and, as secretary, to D.D.D., indicating that any of them may be challenged, where appropriate, in accordance with the provisions of Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Sector public (LRJSP).

THIRD: INCORPORATE into the disciplinary file, for evidentiary purposes, the claim filed by the claimants and their documentation, the documents obtained and generated by the General Sub-directorate of Data Inspection during the investigation phase, as well as the report of previous inspection actions.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations, the sanction that could correspond would be 3,000 euros (three thousand euros) for the violation of article 5 of the GDPR, without prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to LISMARTSA, S.L. with NIF B78112679, granting him a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate. In his writing of allegations must provide your NIF and the procedure number that appears in the heading of this document.

If, within the stipulated period, he does not make allegations to this initial agreement, the same

may be considered a resolution proposal, as established in article

64.2.f) of Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the sanction to be imposed other than a fine, may recognize its responsibility within the term granted for the formulation of allegations to the present initiation agreement; it which will entail a reduction of 20% of the sanction that should be imposed in the present procedure. With the application of this reduction, the sanction would be established at €2,400 (two thousand four hundred euros), resolving the procedure with the imposition of these sanctions.

In the same way, it may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at €2,400 (two thousand four hundred euros), and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate allegations at the opening of the procedure. Voluntary payment of the referred amount

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9/11

in the previous paragraph may be done at any time prior to the resolution. In

In this case, if both reductions were to be applied, the amount of the penalty would remain

established at €1,800 (one thousand eight hundred euros)

In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or resignation of any action or appeal via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts previously indicated €2,400 or €1,800, you must pay it through your deposit in the restricted account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Data Protection Agency at Banco CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for reducing the amount to which welcomes.

Likewise, you must send proof of income to the General Subdirectorate of Inspection to continue with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the date of the initiation agreement or, where appropriate, of the draft initiation agreement.

After this period, its expiration will occur and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is noted that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On February 9, 2023, the claimed party has proceeded to pay of the penalty in the amount of 1,800 euros making use of the two reductions

provided for in the initiation Agreement transcribed above, which implies the recognition of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or appeal against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Commencement Agreement.

FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each www.aepd.es

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10/11

control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The 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."

Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (hereinafter, LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature but the

inadmissibility of the second, the voluntary payment by the presumed perpetrator, in

any moment prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least

20% of the amount of the proposed penalty, these being cumulative among themselves.

The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or resource against the sanction.

The percentage reduction provided for in this section may be increased

according to regulations."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202206413, in

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to LISMARTSA, S.L.

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

Resolution will be made public once the interested parties have been notified.

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11/11

Against this resolution, which puts an end to the administrative process as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation 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.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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