

□ Procedure PS/00353/2021

RESOLUTION OF THE PUNISHMENT PROCEDURE

Through an Agreement dated 07/19/21, the sanctioning procedure was initiated, PS/0353/2021, instructed by the Spanish Data Protection Agency to Ms. A.A.A., with NIF.: ***NIF.1, (hereinafter, "the claimed party"), by virtue of a complaint presented by Ms. BBB (hereinafter, "the complaining party") for alleged infringement of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16, regarding the Protection of Natural Persons with regard to the Treatment of Personal Data and the Free Circulation of these Data (RGPD); and of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights, (LOPDGDD) and based on the following:

BACKGROUND

FIRST: On 05/21/20, you had entry to this Agency in writing, submitted by the complaining party, in which it stated, among others, the following:

"My contract for the company I work for is part-time and I am also collecting from Sepe a compensatory benefit for the hours worked in order to be able to receive a full-time salary. Currently, like many Spanish, my company requested and was approved an ERTE due to force majeure. I am the sole employee. Given the complications that are taking place to be able to collect my ERTE, I made some arrangements to be able to contact the Sepe and so I let it know to the company.

They told me that it had to be the agency (who managed my ERTE) who had to get in touch with Sepe to solve any problems that might arise.

I complained to the company, after a few days, if there was any news from the agency and the company sends me some files via WhatsApp sent by the agency,

according to him, where the economic data, dates, deadlines, amounts

monthly ... of the compensatory benefit that I am receiving and no information about my ERTE.

There is no written or verbal evidence where I authorize the agency that provide these data so personal and completely unrelated to the company. I have not had nor did he have any intention of sharing with the company that he was receiving a provision since it belongs to my absolute privacy and yet the agency is took care to let him know without my consent. The company believed that such data that he had received was my ERTE data and I had to clarify that it was not what I believed, something that angers me since, as I said before, it was not in my plans tell it".

Along with the written claim, the following documentation was provided:

- Copy of WhatsApp message sent by "(...)" where there are two documents with the SEPE logo, with the text "CONSULTATION OF RECEIPTS OF PAYROLLS" and LAST PROVISION" respectively, with the dates 05/21/2020 and 05/21/2020 respectively.

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SECOND: On 10/07/20, by the Director of the Spanish Agency for

Data Protection agreement is issued for the admission of processing of the claim

presented, in accordance with article 65 of the LPDGDD Law, when assessing possible

reasonable indications of a violation of the rules in the field of competences

of the Spanish Agency for Data Protection.

THIRD: On 03/01/21, this Agency sent a request

information to the party complained against, under the investigative powers granted to the control authorities in article 57.1 of the RGPD Regulation.

FOURTH: On 03/26/21, this Agency received a written response to the request made, in which, among others, it was indicated:

1. That the exceptional situation caused by the

COVID-19 that has generated the actions that have given rise to this

complaint, as well as the pressing need of the claimant who needed to collect the ERTE.

2. That the claimant's actions have been contradictory and have led to understand

that both this adviser and the contracting company, which was requested and authorized

to the consultancy to communicate the resolution of the ERTE to the complainant through the

company and/or where appropriate to both parties and for this they had to access the information

communicated in the SEPE section in which all the information related to the

benefits received by the worker.

3. That they understand that both this adviser and the employer are entitled to

process the data of the ERTE concession resolution as they are necessary

to carry out the necessary procedures in application of the legal obligations derived

of the application of extraordinary urgent measures to deal with the impact

economic and social of COVID-19, considers such a situation, for the purposes of suspension of

contracts, such as force majeure, and article 32 of Royal Decree 1483/2012 and 22.2

a) Royal Decree-Law 8/2020 and the applicable social security legislation.

4. That, due to the situation of collapse of the SEPE to make the payments of the

ERTES, the worker and the company contacted this consultancy to

Know the resolution of the ERTE concession.

5. That there is an express consent of the worker to this advice to

comply with this purpose that is deduced from email communications.

That the claimant makes communications to the company, SEPE and this advisor to the ERTE resolution. In addition, both the company and the claimant require to notify you as soon as you are aware of the ERTE resolution.

That these communications include the concepts charged by the claimant for other types of benefits received.

That within an email sent to this advisor as to the company include concepts that the worker considers should not be known by the

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employer, specifically issues relating to the compatibility of the provision for ERTE and non-contributory benefits of the claimant.

A copy of the email sent by the claimant on May 25 is provided of 2020 9:14 sent to ***EMAIL.1 where an Excel file is referenced that is attached, as well as screenshots that are also attached.

That the Excel file contains the following data referring to the claimant; Name and surnames, DNI number, telephone number, bank account number, "Type of measure" where it is stated "SUSPENSION", among others. There is also a screenshot of

"QUESTION OF REQUESTS" where it states "there is no pending request for processing". A copy of the email sent by the claimant on the date

June 5, 2020 11:35 sent to ***EMAIL.1 and copied to ***EMAIL.2 where refers to a request to be sent a copy of a payslip. I also know

refers to the fact that its benefit appears requested on 06/02/2020 and that it is

attach a screenshot.

That said screenshot contains the letterhead "REQUESTS CONSULTATION" and exclusively the following data; "request date" with the value "06/02/2020", "Request status" with the value "APPROVED", "Type of request", "Type of benefit". There is also a link to view the resolution of the request.

There is a copy of the "RESOLUTION APPROVAL OF BENEFITS BY UNEMPLOYMENT" issued by the SEPE in the name of the claimant where they appear as recognized period from 04/01/2020 to 07/02/2020".

A copy of a payslip from RENTYA BOOKINGS, S.L. being the worker claimant, with an accrued period from 03 to 03 31, 2020. There is no evidence that said payroll appears as an attachment to the email dated June 5, 2020.

6. That in the resolution granting the ERTE and in the receipt documents of payroll and last benefit include the same concepts as the claimant considers that they should not be known by the employer.

7. "In our opinion, the main problem is that both in the resolution of the communiqué by the SEPE and in the processing and verification of collection of the ERTE provision both entrepreneur and adviser we can access the benefits charged by any concept the complainant since they are included in the same document and They appear in the same section of the SEPE page. And therefore if the complainant request this procedure that implies access to the information contained in the SEPE necessarily implies an express consent to access the company and this labor advisor to the data and information on the benefits charged by the complainant. Possibly the complainant was unaware of this fact, but this issue It is not the responsibility of this consultancy or the company."

A copy of the treatment order contract between RENT YA BOOKINGS, SL as data controller and data processor signed and

dated February 2, 2019.

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FIFTH: On 07/19/21, by the Director of the Spanish Agency for

Data Protection, a sanctioning procedure is initiated against the claimed party, for

alleged infringement of article 5.1.f) of the RGPD, in relation to article 32 of the

RGPD, when informing third parties, personal data of the

claimant without legitimacy and/or authorization to do so.

SIXTH: Notification of the initiation agreement to the claimed party, the latter by means of a written

dated 07/27/21 made, in summary, the following allegations:

“In view of the resolution adopted by the Spanish Agency for the Protection of

Data regarding the beginning of the Sanctioning Procedure, this party considers that the

The sanction to be imposed must be a warning in accordance with article 58.2 b)

of the RGPD taking into account in any case the following circumstances:

A).-The exceptional situation caused by COVID 19 that has generated the actions that have given rise to this complaint.

B).- The need of the complainant who needed to collect the ERTE benefit

C).- In our opinion, the actions of the complainant in this matter have been

contradictory and has led both this Consultant and the company to understand

contracting party, to which the consultancy was requested and authorized to communicate the resolution

of the ERTE to the complainant through the company and/or, where appropriate, to both parties and

for this we had to access the information communicated in the section of the SEPE in

which contained all the information relating to the benefits received by the

worker.

D).- Remark that the sole purpose of this communication was to attend to the request of the complainant and at no time did anyone process the data or information that he was receiving a part-time benefit. None of the parties did not look at that detail, but at the resolution of the ERTE concession, and at In no case did the complainant inform us so that we could keep this in mind. special circumstance. The sole purpose of this Consultancy was to resolve the concession of the ERTE to the worker so that she could collect the benefit and put in knowledge of the granting of the ERTE. The main objective was that the worker receive the benefit as soon as possible.

E.-Condition of natural person of this part and that the infraction has not generated any benefit to this adviser.

2 Article 83.5 a) of the RGPD, considers that the infringement of "the basic principles for processing, including the conditions for consent under the articles 5, 6, 7 and 9, is punishable, in accordance with section 5 of the aforementioned Article 83 of the aforementioned Regulation, "with administrative fines of €20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount.

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The LOPDGDD in its article 71, Violations, states that: "They constitute violations the acts and behaviors referred to in sections 4, 5 and 6 of article 83 of the

Regulation (EU) 2016/679, as well as those that are contrary to this law

organic". The LOPDGDD in its article 72 indicates for prescription purposes the

"Infractions considered very serious

However, article 58.2 of the RGPD provides the following: "Each authority of

control will have all the following corrective powers indicated below.

continued:(...) b) sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated the provisions of

this Regulation; (...) d) order the controller or processor

that the treatment operations comply with the provisions of this

Regulation, where appropriate, in a certain way and within a certain period

specified; (...)”

Therefore, the RGPD, without prejudice to the provisions of its article 83, contemplates in its

article 58.2 b) the possibility of going to the warning to correct the treatments

personal data that do not meet your expectations. as noted

Previously, this infraction can be sanctioned with a warning.

Considering that the administrative fine that could be levied in accordance with the

provided in article 83.5.b) of the RGPD would constitute a disproportionate burden

for the claimed, in accordance with article 58.2.b) of the RGPD, being able to

proceed with the warning.

This part has made the following corrections and actions to ensure a

due diligence in technical and organizational measures to ensure a level

adequate security in the processing of personal data.

Specifically, the following corrective measures have been adopted:

A request has been sent to the employer of the affected to destroy and/or

delete any personal data of the complainant related to the information

subject of the claimant's complaint. In the employer's communication

certifies not having carried out any treatment of the data of the complainant object of this claim. Guaranteeing its elimination and/or deletion. It is provided as document nº1 and document nº2.

An organizational measure has been taken to ensure an adequate level of security in the processing of personal data in the case of Management of Personal Data for the processing of ERTES of employees. It is provided as document no. 3 and is detailed below: The following is implemented Procedure for the Management of Personal Data for the processing of ERTE of employees. □ In case of ERTE processing. This consultancy will manage the processing of the ERTE of any employee prior communication from the employer (client). □ After the start of the application, the processing of the ERTE will be managed following SEPE instructions including: -Periodic communications from the periods of inactivity. -Presentation of the collective request for the provision of company workers who go to the ERTE. -Each expired month, report that the worker is still in ERTE - Communicate variations in the working day, inform days of inactivity, sick leave, reincorporation of the worker to end the benefit,

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report vacations, layoffs, etc. □ This advice will only refer the client (Employee) the positive or negative resolution of the ERTE granting by the SEPE and the necessary documentation and personal data required by the SEPE during the ERTE. □ In no case will the consultancy review and/or access (even having authorization from the worker and/or the company) to the status of the provision of the

workers affected by ERTE, through the SEPE website.

In view of the corrective measures carried out by this party, we consider that the

RGPD, without prejudice to the provisions of its article 83, contemplates in its article 58.2

b) the possibility of resorting to a warning to correct data processing

personal data that do not meet your expectations. This offense can be

sanctioned with a warning. Considering that the administrative fine that could

fall in accordance with the provisions of article 83.5.b) of the RGPD would constitute a

disproportionate burden for the claimed taking into account the circumstances that

The status of natural person of this claimed person is in the file and that the

infraction has not generated any benefit to this consultant. allowing item

58.2.b) of the RGPD proceed to the warning in the case that concerns us.

In its virtue I REQUEST: it is agreed to impose a sanction of warning to this

part in accordance with article 58.2 b) of the RGPD”.

SEVENTH: On 08/09/21, the proposal for

resolution, in which, it is proposed that, by the Director of the Spanish Agency of

Data Protection proceed to direct a "warning" to the claimed, for

infringement of article 5.1.f) of the RGPD, in relation to the infringement of article 32 of the

RGPD, when informing third parties, personal data of the

claimant without legitimacy and/or authorization to do so.

EIGHTH: The Proposed Resolution has been notified to the respondent party, but no

received in this Agency no writing of allegations to the same, in the period

granted for the purpose.

PROVEN FACTS

1º.- According to the claimant, the personal data referring to his work situation has

been made available to the company where he works, by the person

claimed (management), without your express consent. In particular, this person had

communicated to the company where the claimant works, data referring to the compensatory benefit received from the SEPE, when it was only authorized to communicate the data regarding the collection of the ERTE, in which it was in that moment the worker.

2º.- For his part, the person claimed, alleged in this regard, among others, that:

“The claimant's actions have been contradictory and have led to the understanding that authorized the processing of your data; that it understands that it is entitled to treat the data as they are necessary to carry out the necessary legal procedures; that there is an express consent of the worker for this purpose, which is deduced of the e-mail communications made; that in those communications includes the concepts that the claimant receives for other types of benefits that perceives. However, she defends herself by indicating that both the employer and herself

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can access the benefits charged by the complainant for any concept since they are included in the same document and appear in the same section of the SEPE page and therefore, if the complainant requests this procedure that implies the access to the information contained in the SEPE necessarily implies a express consent of access to the company and this labor consultant to the data and information on the benefits received by the complainant. Possibly the complainant was unaware of this fact, but this issue is not the responsibility of this consultancy or the company.

3º.- Due to these facts, a sanctioning procedure is initiated in this Agency against the party

claimed, for infringement of article 32 of the RGPD, by informing third parties, personal data of the claimant without authorization, demonstrating with This was due to a clear lack of diligence when applying the technical measures and organizational structures that guarantee an adequate level of security in the treatment of personal data, imposing an initial sanction of “warning”.

4º.- Notification of the initiation agreement to the complaining party, the latter in its allegations requests that “(...) it be agreed to impose a warning sanction on this part of in accordance with article 58.2 b) of the RGPD”.

FOUNDATIONS OF LAW

I.- Competition:

Is competent to resolve this Sanctioning Procedure, the Director of the Spanish Agency for Data Protection, by virtue of the powers that article 58.2 of the GDPR Regulation, and, as established in arts. 47, 64.2 and 68.1 of the Law LOPDGDD.

II.

In the present case, it has been verified that the personal data referring to your employment status of the claimant had been made available to the company where he works, by the requested person (the agency in charge of the processing of the ERTE), without your express consent. In particular, this person had communicated to the company where the claimant works, data referring to the compensatory benefit received from the SEPE, when it was only authorized to communicate the data regarding the collection of the ERTE.

These facts are constitutive of an infraction, attributable to the claimed party, for violation of article 5.1.f) of the RGPD, where it states that personal data will be: (...) f) treated in such a way as to guarantee adequate security of the personal data, including protection against unauthorized or unlawful processing and

against its loss, destruction or accidental damage, through the application of measures

appropriate technical or organizational

The security that must be required in the processing of personal data comes

regulated in article 32.1 of the RGPD, where it is established that: "1. considering the

state of the art, the costs of application, and the nature, scope, context and

the purposes of the treatment, as well as risks of varying probability and severity for

the rights and freedoms of natural persons, the person in charge and the person in charge of the

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treatment will apply appropriate technical and organizational measures to guarantee a

adequate level of security, (...)”

In addition, article 5 of the LOPDGDD, on the "Duty of confidentiality", provides

that: 1. Those responsible and in charge of data processing, as well as all

people who intervene in any phase of it will be subject to the duty of

confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679. two.

The general obligation indicated in the previous section will be complementary to the

duties of professional secrecy in accordance with its applicable regulations. 3. The

The obligations established in the previous sections will be maintained even when

the relationship of the obligor with the person in charge or in charge of the

treatment.

Therefore, in accordance with the foregoing, by the Director of the Agency

Spanish Data Protection,

RESOLVES:

FIRST: SEND A WARNING, to Ms. A.A.A. with NIF.: ***NIF.1, for

infringement of article 5.1.f) of the RGPD, in relation to the infringement of article 32 of the RGPD, when informing third parties, personal data of the claimant without the legitimacy and/or authorization to do so.

SECOND: NOTIFY this resolution to Ms. A.A.A. and the complainant about the result of the claim.

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

Common to Public Administrations, and in accordance with the provisions of the

art. 112 and 123 of the aforementioned Law 39/2015, of October 1, interested parties may

file, optionally, an appeal for reconsideration before the Director of the Agency

Spanish Data Protection Authority within a month from the day

following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and paragraph 5 of the provision

additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction

Contentious-Administrative, within two months from the day after

to the notification of this act, as provided in article 46.1 of the aforementioned Law.

Sea Spain Martí.

Director of the Spanish Agency for Data Protection.

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