

Procedure No.: PS/00246/2019

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938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

A.A.A.

(hereinafter, the claimant) on 03/21/2019 filed

FIRST:

claim before the Spanish Data Protection Agency. The claim is directed
against COOPERATIVA VALENCIANA AGRICOLA AYORENSE with NIF F46024535 (in
later, the claimed one). The grounds on which the claim is based are:

“On ***DATE.1, my full name was published relating it to a file of ex-
drive, in the newspaper Las Provincias, on its page ***PAGE.1

In the same terms, a call document was sent to the partners of the
LA AYORENSE AGRICULTURAL COOPERATIVE and was displayed on the notice board of the
headquarters, in public view of members and customers of the Cooperative. “

He states that he asked different people in charge for explanations about his data and the
data protection regulations of the Cooperative. “At the 2019 Assembly, I asked for an explanation
cations of the file, declared null in Cooperative Arbitration of Law by the Con-
book of Agriculture, Entrepreneurship and Cooperativism,” as well as the publication of
my data, but they refused to answer me.

Provides a copy of the newspaper LAS PROVINCIAS of ***DATE.1 in which it appears as
official announcement of the claim, the convening of the Ordinary General Assembly for the

03/24/2018 and the agenda, signed on ***DATE.1, includes, among other issues, the
“Resolution of expulsion file, with the name of the claimant, partner, as well as approvals
bation accounts 2016/17”

Copy of another copy with the same data, possibly the one exposed on boards
of the Cooperative, that the specific physical space where they have been located is unknown.

SECOND: In view of the facts stated, the claim was forwarded so that the
claimed will report:

1.
“Copy of the communications, of the decision adopted that referred to the claim
regarding the transfer of this claim, and proof that the claimant has
received notice of that decision.

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Report on the causes that have motivated the incidence that has originated the claim.

1.
mation.

Report on the measures adopted to prevent the occurrence of incidents si-
two.

thousands.

4. Any other that you consider relevant.”

The respondent dated 05/27/2019 submits a letter stating that they have acted
acted in accordance with its Statutes, and have sent a copy of the response to the claimant.

He explains that on 07/10/2017, the Governing Council of the Valencian Agricultural Cooperative

the Ayoreense adopted the agreement to expel the claimant, as a result of the demonstrations and accusations made by him in the General Assembly dated 03/02/2017, for which reason as established by the obligation derived from the statutes of the Cooperative and the Law of Cooperatives must be the General Assembly the legitimized one to resolve the agreement of expulsion of a partner.

Article 18 of the Cooperative's Statutes states that "The sanction imposed by the governing council will be automatically enforceable, except in the event of expulsion, which will not produce effects until it is ratified by the general assembly or the term to appeal before it has elapsed without having done so. However, it above, all the rights and obligations of the partners will be provisionally suspended until the expulsion agreement is enforceable, except for voting rights and information."

The claimant filed on 08/02/2017 before the General Assembly of the Co-operational, appeal against the resolution of the sanctioning file initiated by the Council Rector.

Complying with the obligation of ratification by the General Assembly, dated 03/28/2018 the same was convened with the following agenda, among others: "1st Resolution Expulsion file of the A.A.A member."

It establishes in article 43 of the Statutes, the "Convocation of the General Assembly ral. Emphasizing on your point 2

"The convening of the general assembly will have to be made by means of an announcement highlighted in the registered office and in each of the work centers, as well as by means of a letter sent to the domicile of the member, or through any other system provided in the Internal Regime Regulation, which ensures the receipt of the same by the partner addressee, with a minimum of fifteen calendar days and a maximum of sixty days from the date of its celebration.

Notwithstanding the provisions of the preceding paragraph, when the cooperative has more of 500 partners may replace the sending of a letter to the partner by the publication of the announcement of the call in at least one widely distributed newspaper in the field of action of the cooperative."

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Provide a copy of:

Appeal against resolution of sanctioning file initiated by the Governing Council

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of the cooperative presented on 08/02/2017.

Copy of the Statutes elevated to notarial deed on 02/03/2005. It follows from his reading

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ture that were adapted to law 11/85 of October 25, of the Generalitat Valenciana and to the cooperative law in writing of 10/25/1986 and modified in various provisions.

Article 16 mentions the faults of the partners, article 17, the sanctions that for fault

Very serious cases can lead to expulsion.

Article 18 states that the faults will be sanctioned by the Governing Council

by opening a file. It is specified that the sanction imposed will be

automatically enforceable except in the case of expulsion, which will not produce

until it is ratified by the General Assembly or the deadline for

resort to it without having done so.

It is also indicated that the partner in any case within a month from

notified of the sanction by the Governing Council may appeal to the Assembly

General Assembly which will be resolved at the first meeting held. held the
Assembly without having resolved and notified the appeal, it will be understood that it has been
mado

It then determines that the member who is sanctioned with expulsion may
shall submit the agreement of the cooperative arbitration assembly within a month
from the notification of the same, although the expulsion will be executive from the same
moment in which it was ratified by said body of the cooperative

Article 43 on convocation of the General Assembly, paragraph two coincides
with the reviewed. Article 71 states that the contentious issues and claims
that may arise between the cooperative and its partners, the internal route will be submitted exhausted
to cooperative arbitration regulated by the cooperative law of the Community
Valenciana in all cases in which it is not expressly prohibited with the
express commitment of this cooperative of its members to comply with the award that in its
day is dressed

The claim was admitted for processing on 06/11/2019.

THIRD: On 11/14/2019, the Director of the Spanish Agency for the Protection of
Data agreed to initiate a sanctioning procedure of WARNING to COOPERATIVE
VALENCIANA AGRICOLA AYORENSE, with NIF F46024535, for the alleged infringement of the
article 5.1.c) of the RGPD, in accordance with article 58.2.b) and 83.5.a) of the RGPD.

The delivery process includes:

“The Support Service of the Electronic Notifications and Addresses Service

Enabled Electronic Information CERTIFIES:

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- That the Ministry of Territorial Policy and Public Administration (through the Secretariat General Department of Digital Administration) is currently the owner of the Notification Service Electronic cations (SNE) and Authorized Electronic Address (DEH) in accordance with Order PRE/878/2010 and Royal Decree 769/2017, of July 28. The loan- The provider of said service since June 26, 2015 is the National Currency Factory. da y Timbre-Royal Mint (FNMT-RCM), according to Management Assignment in force of the Ministry of Finance and Public Administrations.

-That the notification was sent through said service:

Reference: ***REFERENCE.1

Acting Administration: Spanish Data Protection Agency (AEPD)

Owner: - ***HOLDER.1

Subject: "Notification available in the Folder or DEH of the indicated holder"

with the following result:

Availability date: 11/18/2019 12:26:05

Automatic rejection date: 11/29/2019 00:00:00

Automatic rejection generally occurs after ten

calendar days from its availability for access according to paragraph 2, ar-

Article 43, of Law 39/2015, of October 1, of the Administrative Procedure Co-

common of the Public Administrations. And in particular, after the deadline is-

established by the Administration acting in accordance with the legal regulations

cific that it is applicable.

What is certified for the appropriate purposes in Madrid on November 29, 2019."

The LPCAP adds in its article 14 "Right and obligation to interact electronically-

mind with the Public Administrations "

2. In any case, they will be obliged to interact through electronic means with

Public Administrations to carry out any procedure of an administrative procedure

ministerial, at least, the following subjects:

a) Legal persons.”

And it is specified in article 41” General conditions for the practice of notifications

tions “1. Notifications will preferably be made by electronic means and, in

In any case, when the interested party is obliged to receive them by this means.

Notwithstanding the foregoing, the Administrations may make notifications by means of

non-electronic in the following cases:

a) When the notification is made on the occasion of the spontaneous appearance of the interested party.

sado or his representative at the registration assistance offices and request the communication

personal notification or notification at that time.

b) When, in order to ensure the effectiveness of the administrative action, it is necessary to

notification by direct delivery by a public employee of the notifying Administration.

Regardless of the means used, the notifications will be valid as long as they allow

have proof of its sending or making available, of the reception or access by the interested party-

or his representative, their dates and times, the full content, and the reliable identity

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na of the sender and recipient of the same. The accreditation of the notification made is included

will be incorporated into the file.”

As a consequence, the notification of the agreement is understood to have been produced with all the legal effects.

In the initial agreement it was indicated that “if within the stipulated period it did not make allegations

tions to this initial agreement, it may be considered a resolution proposal, depending on according to what is established in article 64.2.f) of Law 39/2015, of 1/10, of the Administrative Procedure Common Income Statement for Public Administrations (hereinafter, LPACAP)."

PROVEN FACTS

1) AAA, claimant, on 03/21/2019, filed a claim against COOPERATIVA VALENCIANA AGRICOLA AYORENSE because he exposed his personal data through the sending page ***PÁGINA.1 to the newspaper Las Provincias, where on ***DATE.1, it was made known your name and surname relating it to an expulsion file, and within the framework of the agenda of the call for the General Assembly to be held on 03/24/2018.

The claimant also indicates that the same note was posted at the corporate headquarters, a space in the that other non-members of the cooperative could access, for example providers.

2) State the claim:

a.

On 07/10/2017, the Governing Council of the Cooperative adopted the agreement to expel the claimant. The statutes of the Cooperative and the Law of Cooperatives provide that the Assembly General is the one entitled to resolve the expulsion agreement of a partner, so said body had to ratify the agreement.

The claimant presented on 08/02/2017 before the General Assembly, an appeal against

b.

the resolution of the sanctioning file. yes

c. In order to comply with the obligation of ratification by the General Assembly,

I had to call this, and it was dated 03/28/2018. As a means of advertising

cio the aforementioned announcement was sent to the newspaper Las Provincias, appearing in the order of day, among others: "1st Resolution File of expulsion of the member A.A.A."

3)

Article 43.2 of the Statutes of the respondent indicates at least two alternative forms.

you are going to call the General Assembly, well ” through a prominent announcement at the registered office and in each of the work centers, as well as by means of a letter given to the domicile of the partner, or through any other system provided for in the Regulations of Re-internal system, which ensures the receipt of the same by the recipient partner, with an advance minimum term of fifteen calendar days and maximum of sixty days from the date of execution of that.

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And the other, when the cooperative has more than 500 members, “may replace the referral of a letter to the member for the publication of the announcement of the call in at least one newspaper of great diffusion in the sphere of action of the cooperative.”

In any case, the defendant opted for this second possibility.

4)

The summons to the agenda identified the complainant for the purpose of discussing or assess the approval in the agenda of the General Assembly the matter of his expulsion, disclosing in the newspaper Las Provincias, to non-member third parties, data that only concerns the circle of partners, and data that violate their right to privacy and data protection of the affected.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD 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 process.

II

Although the partners have as a common base the application of the Statutes, and they treat the data in order to manage their relationship, the rest of the rules must be respected in force. Article 5.1 c) of the RGDPD points out:

"1. The personal data will be:

"c) adequate, pertinent and limited to what is necessary in relation to the purposes for which who are treated;"

Statutes establish:

"The convening of the general assembly will have to be made by means of an announcement prominent in the registered office and in each of the work centers, as well as through letter sent to the domicile of the member, or through any other system provided for in the Internal Regime Regulation, which ensures the receipt of the same by the partner addressee, with a minimum notice of fifteen calendar days and a maximum of sixty days to the date of its celebration.

Notwithstanding the provisions of the preceding paragraph, when the cooperative has more than 500 partners may replace the sending of a letter to the partner by the publication of the announcement of the call in at least one widely distributed newspaper in the field of action of the cooperative."

For the purposes of convening the Assembly, it would be valid in each letter addressed to each partner include the name and surname of the sanctioned with the expulsion, because it produces effects and is related to a matter to be discussed at its headquarters. If data from personal character in public establishments in which not only members access, it is being

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making known to a group of non-affected-interested said information and data, affecting the right to have said data managed and intended for the scope of the society.

In addition, the note of the call in the official newspaper is an alternative, when you have more of 500 partners. But if you go to this medium you have to take into account that it is not suitable or pertinent the exhibition of the name and surnames of said person by the direct identifiability of the same, in a matter that is pending ratification by said Assembly.

The Statutes can establish convocation procedures, but if it is carried out advertising, should not be known by third parties who are not part of it, for not neither affect its framework of validity. The way to apply this publication in this case has violated the right of the claimant.

The way to proceed through the sending to a newspaper of the call to the Meeting can be carried out, although affecting personal data, extreme caution must be taken, since the data of a partner is being disclosed to any person through the name and surnames and that he has been expelled from the Cooperative, a circumstance that only concerns his members.

The Statutes provide for the possibility of exposure in a medium, but it is not necessary that appears the complete name being able this to have been in his case identified by some other reference that only the partners knew or had the possibility of knowing, or could be have sent to each partner the identification data in relation to the call, but guaranteeing that only the partners have access to said information, outside the circle that does not belongs to that group. Other modalities of making known the agenda

would be possible, for example through the website of the claimed party, with user and password, or abbreviated mention of the subject, without personal data, to prevent third parties from Interested parties can learn about the issue.

Likewise, the claimed party must take into account said purpose in the exhibition in the premises, on the bulletin board used for it so that people who are not associates, access in their case to the knowledge of personal data of the associates.

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data, and although there may be authorization for the treatment of data of the partner with the status of associate, this will always be within the appropriate framework and own, not seeming that the sending to a means of communication of the agenda containing your data and its expulsion is appropriate.

Therefore, although there may be legitimacy for the treatment of the member's data in the corresponding framework, in the present case, its use has crossed the same, violating the principle established in article 5.1.c of the RGPD.

III

Article 83.5 a) of the RGPD, considers that the infringement of “the basic principles for processing, including the conditions for consent under articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned article 83 of the aforementioned

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Regulation, with administrative fines of a maximum of €20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the total annual turnover of the previous financial year, opting for the highest amount.

Article 58.2 of the RGPD indicates: "Each control authority will have all the

following corrective powers indicated below:

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

where the treatment operations have infringed the provisions of this Regulation;

d) order the controller or processor that the processing operations

compliance with the provisions of this Regulation, where appropriate, of a de-

completed manner and within a specified time."

In the present case, no specific corrective measures are imposed since

It contains the course of action to be carried out. Therefore, according to the legislation

tion applicable and assessed the graduation criteria of the sanctions whose existence has

been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE COOPERATIVA VALENCIANA AGRICOLA AYORENSE, with NIF

F46024535, for an infringement of Article 5.1.c) of the RGPD, as indicated in article 83.5

a) and 58.2. b) of the RGPD, a warning fine.

SECOND: NOTIFY this resolution to COOPERATIVA VALENCIANA AGRICOLA

AYORENSE.

THIRD: 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 interested parties

may optionally file 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-administrative appeal before the Chamber

of the Contentious-administrative of the National High Court, in accordance with the provisions of the

article 25 and in section 5 of the fourth additional provision of Law 29/1998, of 13

July, regulatory of the Contentious-administrative Jurisdiction, in the term of two months to count from the day following the notification of this act, as provided in 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, may provisionally suspend the firm resolution in administrative proceedings if the interested party states its intention to file a contentious-administrative appeal. If this is the case,

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through one of the

remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1/10. You must also transfer to the Agency the documentation that accredits the effective filing of the appeal

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contentious-administrative. If the Agency was not aware of the filing of the

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

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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