

□ File No.: EXP202206520

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claiming party) dated May 7, 2022
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:

The claimant contracted the tax services of the claimed party, through
ABACOSUR ASESORIA, to resolve a claim before the Tax Agency.

Once the time has elapsed and in light of the response from the Tax Agency, the claimant
requested the requested party to provide proof of the procedures and documents
submitted to said body.

According to the claimant, the respondent provided him with what qualifies as a
false receipt in which the data of another client and not yours is recorded.

Together with the claim, provide the proof of presentation that the claimed party
provided to the complaining party.

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 claimed party, for
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 regulations of
Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected on June 8, 2022 as it appears in the certificate of notification that is in the file.

Yes ok; To date, no response has been received to this letter of transfer.

THIRD: On August 7, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On October 17, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party,

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for the alleged violation of Article 5.1.f) of the GDPR and Article 32 of the GDPR, typified in Article 83.5 of the GDPR and Article 83.4 of the GDPR.

FIFTH: Notified of the aforementioned start-up 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 has been proven in the file that the personal data of another client, specifically C.C.C., in the database of the claimed party, were improperly exposed to the complaining party.

SECOND: It has been proven in the file that the claimed party provided the complaining party, when he requested proof of the procedures and documents submitted to the Tax Agency, which qualifies as a false receipt in the that contain the data of another client and not yours.

THIRD:

It has been accredited in the file that, upon receipt of presentation provided by the claimant, there is the (...) corresponding to a electronic document issued by the Tax Agency, in reference to another file and another administrator.

FUNDAMENTALS OF LAW

Yo

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
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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 5.1.f) of the GDPR

Article 5.1.f) "Principles relating to processing" of the GDPR establishes:

"1. Personal data will be:

(...)

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

In the present case, it is clear that the personal data of another client, specifically
de C.C.C., in the database of the claimed party, were improperly

exposed to the complaining party.

The complaining party affirms that it asked the defendant party for proof of the procedures and documents presented to the Tax Agency.

In the presentation receipt provided by the claiming party and which appears in the file, there is the (...) of the procedure carried out before the aforementioned Agency.

All electronic documents signed by the Tax Agency have a secure verification code that allows online recovery.

If you access ***URL.1 and fill in the corresponding box, you can consult the document issued by the Tax Agency in which said code was included.

Document in which personal data appears that does not correspond to the party claimant, allowing their access.

Classification of the infringement of article 5.1.f) of the GDPR

II

The aforementioned infringement of article 5.1.f) of the GDPR supposes the commission of the infringements typified in article 83.5 of the GDPR that under the heading "General conditions for the imposition of administrative fines" provides:

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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:

a) the basic principles for the treatment, including the conditions for the 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. (...)"

Penalty for violation of article 5.1.f) of the GDPR

IV.

For the purposes of deciding on the imposition of an administrative fine and its amount,

considers that the infringement in question is serious for the purposes of the GDPR, establishing a penalty of TWO THOUSAND EUROS (€2,000).

V

GDPR Article 32

Article 32 "Security of treatment" of the GDPR establishes:

"1. Taking into account the state of the art, the application costs, and the nature of

nature, scope, context and purposes of processing, as well as probability risks

and variable severity for the rights and freedoms of natural persons, the responsibility

responsible and the person in charge of the treatment will apply appropriate technical and organizational measures.

measures to guarantee a level of security appropriate to the risk, which, where appropriate, will include

yeah, among others:

- a) the pseudonymization and encryption of personal data;
- b) the ability to guarantee the confidentiality, integrity, availability and re-permanent silence of treatment systems and services;
- c) the ability to restore the availability and access to personal data quickly in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and assessment of effectiveness technical and organizational measures to guarantee the security of processing

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2. When assessing the adequacy of the security level, particular account shall be taken of

The risks presented by the data processing, in particular as a consequence of the destruction, loss or accidental or illegal alteration of personal data transmitted collected, preserved or processed in another way, or the unauthorized communication or access two to said data.

3. Adherence to a code of conduct approved under article 40 or to a mechanism certification document approved in accordance with article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of this article.

4. The controller and the processor shall take measures to ensure that any person acting under the authority of the controller or processor and having

ga access to personal data can only process such data following instructions of the controller, unless it is required to do so by Union law or by the Member States”.

In the present case, at the time the breach occurred, the security measures available to the defendant were totally insufficient to guarantee the confidentiality of the personal data of the clients.

Access to the personal and financial data of another client has been facilitated, making recorded in the receipt of presentation of documents before the Tax Agency, the (...) corresponding to an electronic document issued by the Tax Agency, in reference to another file and to another administered, stating the personal data of the same.

That is stated in the receipt of presentation of documents before the Tax Agency, fa- provided by the claimed party to the claimant, the (...) corresponding to a document e-mail containing personal data of another company, evidence that it does not adequate measures were in place to guarantee the confidentiality, integrity and availability of treatment systems and services.

Classification of the infringement of article 32 of the GDPR

SAW

The aforementioned infringement of article 32 of the RGD supposes the commission of infringements ti- classified in article 83.4 of the GDPR that under the heading "General conditions 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 a maximum of 10,000,000 EUR or, in the case of of a company, of an amount equivalent to a maximum of 2% of the volume of overall annual total business of the previous financial year, opting for the one with the highest amount:

a) the obligations of the person in charge and the person in charge according to articles 8, 11, 25 to 39, 42 and 43; (...)"

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

The acts and behaviors referred to in sections 4, 5 and 6 have infractions

of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the present organic law".

For the purposes of the limitation period, article 73 "Infractions considered serious" of the LOPDGDD indicates:

"Based on what is established in article 83.4 of Regulation (EU) 2016/679, the

They are considered serious and will prescribe after two years the infractions that suppose a vulnerability. substantial portion of the articles mentioned therein and, in particular, the following:

f) The lack of adoption of those technical and organizational measures that result have appropriate measures to guarantee a level of security appropriate to the risk of the treatment, in the terms required by article 32.1 of the Regulation (EU) 2016/679.

Penalty for violation of article 32 of the GDPR

VII

For the purposes of deciding on the imposition of an administrative fine and its amount, considers that the infringement in question is serious for the purposes of the GDPR, establishing a penalty of THOUSAND EUROS (€1,000).

VIII

The text of the resolution establishes which have been the infractions committed and the facts that have given rise to the violation of the regulations for the protection of data, from which it is clearly inferred what are the measures to adopt, without prejudice that the type of procedures, mechanisms or concrete instruments for implement them corresponds to the sanctioned party, since it is responsible for the treatment who fully knows its organization and has to decide, based on the proactive responsibility and risk approach, how to comply with the GDPR and the LOPDGDD.

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.f) of the GDPR typified in Article 83.5 of the GDPR, a fine of TWO THOUSAND EUROS (€2,000).

IMPOSE B.B.B., with NIF ***NIF.1, for a violation of Article 32 of the GDPR typified in Article 83.4 of the GDPR, a fine of THOUSAND EUROS (€1,000).

SECOND: REQUIRE B.B.B. to implement, within three months, the necessary corrective measures to adapt its performance to the regulations of protection of personal data, which prevent events from being repeated in the future similar, as well as inform this Agency within the same period of the measures taken.

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THIRD: NOTIFY this resolution to B.B.B..

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

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 period

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 IBAN number: ES00-0000-0000-0000-0000, open in the name of the

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

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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Mar Spain Marti

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