

☐ N/Ref.: E/00844/2020 - CO/00152/2020

RESOLUTION OF FILE OF ACTIONS

Of the actions followed due to the claim filed with the Agency

Spanish Data Protection, for alleged violation of the Regulation (EU)

2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the

protection of natural persons with regard to data processing

personal data and the free circulation of these data (hereinafter, RGPD) and having

based on the following

FACTS

FIRST: Dated 12/27/2019 and with entry registration number 061842/2019,

a claim was entered in this Agency, related to a treatment of

cross-border nature of personal data carried out by GOOGLE IRELAND

LIMITED, presented by A.A.A. (hereinafter, the claimant) for an alleged

violation of Article 15 of the RGPD.

The grounds on which the claimant bases the claim are:

☐

Inability to access the ***EMAIL.1 account from which the claimant is

owner.

☐ When trying to credit, a notice appears informing you that the account

has been disqualified for a serious violation of company policies.

After several attempts to recover the account, the person in charge confirms that

have violated the policies and refuses to reinstate the account.

☐

Along with the claim is provided:

Account restoration request form.

□

□ Communications with the person in charge reiterating the request

SECOND: GOOGLE IRELAND LIMITED has its principal or sole establishment in Ireland, but the matter under consideration has only local repercussions, pursuant to the provisions of article 56.2 RGPD.

THIRD: The claim was transferred to the establishment of the person responsible in Spain to proceed with its analysis and respond to this Agency within the deadline of one month. Likewise, the respondent was requested: accreditation of the response provided to the claimant, in the event of exercising the rights regulated in articles 15 to 22 of the GDPR; report on the causes that led to the incidence produced; Y detail of the measures adopted to avoid similar situations.

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FOURTH: As of 03/16/2020, this Agency has a response to said transfer by part of GOOGLE IRELAND LIMITED.

FIFTH: Since after the transfer of the claim, the data controller did not grant access to the claimant, the processing of the claim of in accordance with the cooperation procedure regulated in article 60 of the RGPD, and on 06/17/2020 the provisional file of the procedure and the referral of the claim to the Data Protection Commission (hereinafter, DPC), supervisory authority of Ireland, as it is the competent authority to act as main control, in accordance with the provisions of article 56.1 of the RGPD. This referral is carried out, through the “Internal Market Information System” (IMI).

SIXTH: After examining the claim, the DPC considers that it is related with the disabling of an account and the impossibility of accessing it due to the non-observance of the policies of the person in charge by the interested party instead of with a matter related to data protection. Furthermore, there is no evidence that requested the exercise of the right of access in accordance with article 15 of the RGD.

SEVENTH: Dated 08/07/2020, this Agency contains a response from GOOGLE IRELAND LIMITED as a continuation of the allegations filed on 03/16/2020.

FOUNDATIONS OF LAW

I - Competition

In accordance with the provisions of article 60.8 of the RGD, the Director of the Agency Spanish Data Protection Authority is competent to adopt this resolution, in accordance with article 12.2, section i) of Royal Decree 428/1993, of 26 March, which approves the Statute of the Data Protection Agency (in hereinafter, RD 428/1993) and the first transitory provision of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of the rights (hereinafter, LOPDGDD).

II - Internal Market Information System (IMI)

The Internal Market Information System is regulated by the Regulation (EU) No. 1024/2012, of the European Parliament and of the Council, of 25 October 2012 (IMI Regulation), and its objective is to promote cooperation cross-border administrative assistance, mutual assistance between Member States and the information exchange.

III - Determination of the territorial scope

As specified in article 66 of the LOPDGDD:

"one. Except in the cases referred to in article 64.3 of this organic law, the

Spanish Agency for Data Protection must, prior to carrying out

of any other action, including the admission to processing of a claim or the commencement of preliminary investigative actions, examine their competence and

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determine the national or cross-border character, in any of its modalities, of the procedure to follow.

2. If the Spanish Agency for Data Protection considers that you do not have the condition of the main control authority for the processing of the procedure will send, without further procedure, the claim formulated to the main control authority that it considers competent, so that it is given the appropriate course. The agency

Spanish Data Protection Agency will notify this circumstance to whoever, where appropriate, would have made the claim.

The agreement by which the referral referred to in the previous paragraph is resolved imply the provisional filing of the procedure, notwithstanding that the Agency Spanish Data Protection is issued, if appropriate, the resolution to the one referred to in section 8 of article 60 of Regulation (EU) 2016/679.”

IV - Main establishment, cross-border treatment and control authority principal

Article 4.16 of the RGPD defines “main establishment”:

“a) with regard to a data controller with establishments in more of a Member State, the place of its central administration in the Union, unless the decisions about the purposes and means of processing are made in another establishment of the controller in the Union and the latter establishment has the

power to enforce such decisions, in which case the establishment that has

Once such decisions have been made, it will be considered a main establishment;

b) with regard to a data processor with establishments in more than

a Member State, the place of its central administration in the Union or, if it does not have

this, the establishment of the person in charge in the Union in which the main

processing activities in the context of the activities of a treatment facility

processor to the extent that the processor is subject to specific obligations

in accordance with this Regulation”

For its part, article 4.23 of the RGPD considers “cross-border processing”:

“a) the processing of personal data carried out in the context of the activities of

establishments in more than one Member State of a controller or processor

of processing in the Union, if the controller or processor is established in more

of a Member State,

or b) the processing of personal data carried out in the context of the activities of

a single establishment of a controller or processor in the

Union, but which substantially affects or is likely to substantially affect

interested in more than one Member State”

The RGPD provides, in its article 56.1, for cases of cross-border processing,

provided for in its article 4.23), in relation to the competence of the authority of

main control, that, without prejudice to the provisions of article 55, the authority of

control of the main establishment or of the only establishment of the person in charge or of the

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The person in charge of the treatment will be competent to act as a control authority principal for cross-border processing carried out by said controller or commissioned in accordance with the procedure established in article 60.

In the case examined, as stated, GOOGLE IRELAND LIMITED has its main or sole establishment in Ireland, so the supervisory authority of Ireland is competent to act as the lead supervisory authority.

V.- Transfer of the claim

Article 65.4 of the LOPDGDD law has provided for a mechanism prior to admission to processing of claims made before the Spanish Protection Agency of Data, which consists of transferring them to the Protection Delegates of Data designated by those responsible or in charge of the treatment, for the purposes provided for in article 37 of the aforementioned rule, or to these when they do not exist. designated, to proceed to the analysis of said claims and to give them response within one month.

In accordance with the regulations set forth, the claim was transferred to the establishment of the person in charge in Spain

VI - Interested control authority

In accordance with the provisions of article 4.22) of the RGPD, it is the Authority of interested control, the control authority affected by the data processing personal because:

- a.- The controller or processor is established in the territory of the Member State of that supervisory authority;
- b.- The interested parties who reside in the Member State of that authority of control are substantially affected or are likely to be substantially affected by the treatment, or
- c.- A claim has been filed with that control authority.

VII - Cooperation and coherence procedure

Article 60 of the RGPD, which regulates the cooperation procedure between the main supervisory authority and the other interested supervisory authorities, has in section 8, the following:

“8. Notwithstanding the provisions of section 7, when rejecting or rejecting a claim, the control authority before which it has been presented will adopt the decision, it will notify the claimant and inform the data controller of it.”

VIII - Claimed issue and legal reasoning

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In this case, the claimant reveals the impossibility of accessing the account

***EMAIL.1 of which he is the owner. Likewise, it points out that when trying to accredit

A notice appears informing you that the account has been disabled by

Serious violation of company policies. After several attempts to retrieve the account, the controller confirms that the policies have been violated and refuses to reset the account.

For its part, GOOGLE IRELAND LIMITED has stated after the transfer of the

claim that the claimant has not at any time exercised the right to

access protected by data protection regulations against the company, but

rather, what was requested was the restitution of an account that had been

suspended. These statements have been reiterated by the entity in its letter of

08/7/2020, in which it insists on the fact that the claimant has not formulated the

right of access, so it considers that this claim would be outside the

field of data protection.

Finally, after examining the claim, the DPC considers that it is related with the disabling of an account and the impossibility of accessing it due to the non-observance of the policies of the person in charge by the interested party instead of with a matter related to data protection. Furthermore, there is no evidence that requested the exercise of the right of access in accordance with article 15 of the RGPD

As far as this Agency is concerned and according to the documentation in the file, it is inferred that the claimant at no time has addressed the claimed requesting the exercise of the right of access in accordance with art. 15 of GDPR.

Thus, and taking into account that the facts denounced are not subject to In terms of data protection, there is a lack of rational indications of the existence of an infraction, proceeding, consequently, to the file of the present claim without prejudice to the fact that the interested party may file another claim in the that the request for the right of access is accredited before the person in charge.

Therefore, in accordance with what was indicated, by the Director of the Spanish Agency for Data Protection,

HE REMEMBERS:

FIRST: PROCEED TO FILE the claim filed, dated December 27, December 2019 and with entry registration number 061842/2019

SECOND: NOTIFY this resolution to the CLAIMANT.

THIRD: INFORM GOOGLE IRELAND LIMITED of the decision taken in this resolution

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

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

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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 Marti

Director of the Spanish Data Protection Agency

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