

Procedure No.: PS/00230/2019

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00230/2019, instructed by the Spanish Agency for Data Protection to D.A.A.A. (hereinafter the defendant), in view of the complaint presented by D.B.B.B. (hereinafter the claimant), and based on the following

BACKGROUND

FIRST: The affected party filed a claim with the Agency dated 12/03/2018 Spanish Data Protection. The writ is directed against the defendant and the reasons on which he bases his claim are, in summary, the following: that he has had knowledge that on 11/29/2018 the publication on Facebook of his May payroll containing all your personal data on the professional page of the claimed person who manages the payroll of the company (labour, tax and accounting advice), for which works.

SECOND: Upon receipt of the claim, the Subdirector General for Data Inspection proceeded to carry out the following actions:

On 02/01/2019, the claim filed for analysis and communication to the affected party of the decision adopted in this regard. Equally, he was required so that within a month he sent to the determined Agency information:

- Copy of the communications, of the adopted decision that has been sent to the claimant regarding the transfer of this claim, and proof that the claimant has received communication of that decision.
- Report on the causes that have motivated the incidence that has originated the claim.
- Report on the measures adopted to prevent the occurrence of

similar incidents.

- Any other that you consider relevant.

On the same date, the claimant was informed of the receipt of the claim and its transfer to the claimed entity.

On 05/23/2019, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit the claim for processing filed by the claimant against the respondent.

THIRD: On 07/05/2019, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infringement of Article 5.1.f) of the RGPD, typified in Article 83.5 of the RGPD.

FOURTH: Once the initiation agreement has been notified, the one claimed at the time of this The resolution has not presented a written statement of allegations, for which reason the indicated in article 64 of Law 39/2015, of October 1, on the Procedure

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Common Administrative Law of Public Administrations, which in section f) establishes that in the event of not making allegations within the period established on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, reason why a Resolution is issued.

FIFTH: Of the actions carried out in this proceeding, they have been accredited the following:

PROVEN FACTS

FIRST: On 12/03/2018 it has entry in the Spanish Agency for the Protection of

Written data of the claimant in which he declares that he has had knowledge of the 11/29/2018 of the publication on Facebook without your consent on the page professional of the claimed, who manages the payroll of the company for which works, from your May payroll containing all your personal data.

SECOND: There are provided screen prints of both the profile of the Consultancy labour, tax and accounting information on Facebook, as well as the professional profile of the person claimed in the aforementioned social network.

THIRD: There is a screen print of the Facebook page where The claimant's payroll is published (**URL.1) and in which they appear, in addition to data of an economic nature, your personal data: name and surnames, nif, seniority, SS affiliation number, contribution group, etc.

FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD, The Director of the Spanish Data Protection Agency is competent to resolve this procedure.

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Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations, in its article 64 "Agreement of initiation in the procedures of a sanctioning nature", provides:

II

"1. The initiation agreement will be communicated to the instructor of the procedure, with transfer of how many actions exist in this regard, and the interested parties will be notified, understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the rules regulators of the procedure so provide.

2. The initiation agreement must contain at least:

a) Identification of the person or persons allegedly responsible.

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b) The facts that motivate the initiation of the procedure, its possible rating and sanctions that may apply, without prejudice to what results of instruction.

c) Identification of the instructor and, where appropriate, Secretary of the procedure, with express indication of the system of recusal of the same.

d) Competent body for the resolution of the procedure and regulation that attributes such competence, indicating the possibility that the alleged perpetrator can voluntarily acknowledge its responsibility, with the effects provided for in the article 85.

e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those may adopt during the same in accordance with article 56.

f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in the event not to carry out allegations within the stipulated period on the content of the agreement of initiation, it may be considered a resolution proposal when it contains a precise statement about the imputed responsibility.

3. Exceptionally, when at the time of issuing the initiation agreement there are not sufficient elements for the initial qualification of the facts that motivate the initiation of the procedure, the aforementioned qualification may be carried out in a phase later by drawing up a List of Charges, which must be notified to the interested".

In application of the previous precept and taking into account that no formulated allegations to the initial agreement, it is appropriate to resolve the initiated procedure.

The defendant is imputed in this sanctioning procedure a infringement of article 5.1.f), Principles related to the treatment, of the RGPD that establishes that:

III

"1. The personal data will be:

(...)

f) treated in such a way as to ensure 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 ("integrity and confidentiality").

(...)"

At the same time, article 5, Duty of confidentiality, of the new Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), states that:

"1. Those responsible and in charge of data processing as well as all people who intervene in any phase of this will be subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

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2. The general obligation indicated in the previous section will be complementary of the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will remain

even when the relationship of the obligor with the person in charge or person in charge had ended of the treatment”.

In accordance with the facts proven in this proceeding, the claimed has violated article 5.1.f), in relation to article 5 of the LOPDGDD, materialized in the publication on Facebook, on the professional page of the consultancy labour, tax and accounting in which he works, without the consent or authorization of the affected from your payroll for the month of May containing, in addition to economic data, data of a personal nature of the same violating the duty of confidentiality.

IV

Article 83.5. a) of the RGPD, considers that the infringement of “the principles basic for the treatment, including the conditions for the consent in accordance with of articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the mentioned article 83 of the aforementioned GDPR, “with administrative fines of €20,000,000 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.

The LOPDGDD in its article 72, for prescription purposes, establishes:

“Infringements considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particularly the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679.

(...)

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

of control will have all the following corrective powers indicated below:

continuation:

(...)

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

warning when the processing operations have violated the provisions of

this Regulation;

(...)

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

processing of personal data that do not meet your expectations. About

when it is appropriate to opt for one or the other route, the application of article 83 of the RGPD

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or the corrective measure of warning of article 58.2.b), the rule itself in its

Recital 148 establishes the following:

“In the event of a minor offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than

sanction by means of a fine, a warning may be imposed. must however

Special attention should be paid to the nature, seriousness and duration of the infringement, its

intentional nature, to the measures taken to alleviate the damages suffered,

the degree of liability or any relevant prior violation, the manner in which

that the control authority has been aware of the infraction, compliance

of measures ordered against the person responsible or in charge, adherence to codes of

conduct and any other aggravating or mitigating circumstance.”

It should be noted that the respondent did not respond to the request for information

formulated by the Inspection Service.

At this point, it is necessary to inform that not meeting the requirements of the Agency may constitute a very serious infringement in accordance with the indicated in article 72 of the LOPDGDD, which establishes: “1. Depending on what established in article 83.5 of Regulation (EU) 2016/679 are considered very serious and Infractions that suppose a substantial violation will prescribe after three years.

of the articles mentioned therein and, in particular, the following:

(...)

ñ) Failure to facilitate access by data protection authority personnel competent to personal data, information, premises, equipment and means of treatment that are required by the data protection authority for the exercise of its investigative powers.

o) The resistance or obstruction of the exercise of the inspection function by the competent data protection authority.

(...)”

At the same time, notification of the start agreement and after the term granted to formulate allegations, I do not present any writing.

It is necessary to point out that if the incidence is not corrected by eliminating the information contained in the social network Facebook or reiterate the conduct manifest in the claim and that is the cause of this procedure, as well as not then inform this AEPD of the measures adopted, it could proceed to the exercise of possible actions before the person in charge of the treatment in order to effectively apply the appropriate measures to guarantee and not compromise the confidentiality of personal data and the right to people's privacy.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

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The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE D. A.A.A., with NIF ***NIF.1, for an infraction of article

5.1.f) of the RGPD, sanctioned in accordance with the provisions of article 83.5.a) of the aforementioned RGPD, with a sanction of WARNING in accordance with the provisions of the article 58.2.b) of the RGPD.

SECOND: NOTIFY this resolution to the D.A.A.A. and require him to inform the AEPD of the measures adopted to prevent it from being able to occur a new infringement of article 5.1.f) of the RGPD, trying to adopt effectively measures that prevent the disclosure to third parties of personal data. personal character without the consent or authorization of those affected, violating the duty of confidentiality.

In accordance with the provisions of article 50 of the LOPDPGDD, the

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 LOPDPGDD, 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 Spanish Agency for Data Protection within a period of

month 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 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, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of
through the

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Director of the Spanish Data Protection Agency