☐ File No.: EXP202100895

RESOLUTION OF PUNISHMENT 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 complaining party) dated July 11, 2021

filed a claim with the Spanish Data Protection Agency.

The claim is directed against INSEKT FOOD S.L. with NIF B01594860 (hereinafter,

the claimed party).

The reason on which the claim is based is that the owners of the entity claimed

have disclosed personal data of the complainant without their consent.

Specifically, it states that they have been provided through the Whatsapp application, in

various group chats ("***CHAT.1" with 257 members, "***CHAT.2" with 257

members, and "***CHAT.3" with 27 members), personal data such as your name and two

surnames, physical address with street name and number, postal code, town and

Province.

A complaint has been filed at the National Police Station in Alcázar de San

Juan (Ciudad Real) with certificate number XXXX/YY.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), on August 19, 2021, said claim was transferred to

the party claimed, so that it proceeded to its analysis and inform this Agency in the

period of one month, of the actions carried out to adapt to the requirements

provided for in the data protection regulations.

We proceeded to the practice of notification of the transfer of the claim through

electronic means, without the claimed party accessing its content, within a period of

ten calendar days from the date the notification is made available. Despite of

rejection of the notification, it was practiced again on paper at the postal address

known to the claimant, resulting in this shipment being returned by the Postal Service with

the indication "unknown".

THIRD: On October 28, 2021, the Director of the Spanish Agency for

Data Protection agreed to admit for processing the claim presented by the party

claimant.

FOURTH: On December 20, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party,

for the alleged infringement of article 6 of the RGPD, typified in article 83.5 of the

GDPR.

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FIFTH: After the period granted for the formulation of allegations to the

agreement to initiate the procedure, it has been verified that no allegation has been received

any by the claimed party.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP) -provision of which

the party claimed was informed in the agreement to open the proceeding-

establishes that if allegations are not made within the stipulated period on the content of the

initiation agreement, when it contains a precise statement about the

imputed responsibility, may be considered a resolution proposal. In the

present case, the agreement to initiate the disciplinary proceedings determined the

facts in which the imputation was specified, the infraction of the RGPD attributed to the

claimed and the sanction that could be imposed. Therefore, taking into account that

the party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of

beginning is considered in the present case resolution proposal.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: They have been provided through the Whatsapp application, in various chats

group ("***CHAT.1" with 257 members, "***CHAT.2" with 257 members, and

"***CHAT.3" with 27 members), personal data such as your first name and two surnames,

physical address with street name and number, postal code, town and province.

SECOND On January 2, 2022, the agreement to start this

sanctioning procedure, giving a period of ten days to present allegations

the same.

Said period has elapsed without having received any allegation by the party

claimed, so said agreement becomes a resolution proposal of

in accordance with article 64.2.f) of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (hereinafter

LPACAP) - provision of which the respondent was informed in the settlement agreement

opening of the procedure - which establishes that if no allegations are made in the

term foreseen on the content of the initiation agreement, when it contains a

precise statement about the imputed responsibility, may be

considered motion for a resolution.

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 the provisions of articles 47 and 48 of the LOPDGDD, the Director

of the Spanish Agency for Data Protection is competent to initiate and to

resolve this procedure.

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II

Article 4.11 of the RGPD defines the consent of the interested party as "any

manifestation of free, specific, informed and unequivocal will by which the

The interested party accepts, either by means of a declaration or a clear affirmative action, the

processing of personal data concerning you".

In this sense, article 6.1 of Organic Law 3/2018, of December 5, of

Protection of Personal Data and guarantee of digital rights, hereinafter LO-

PDGDD, establishes that "in accordance with the provisions of article 4.11 of the Regulation-

(EU) 2016/679, consent of the affected party is understood to be any manifestation

of free, specific, informed and unequivocal will by which he accepts, either

by means of a declaration or a clear affirmative action, the processing of personal data

nals that concern him".

For its part, article 6 of the GDPR establishes the following:

"1. The processing will only be lawful if at least one of the following conditions is met:

nes:

a) the interested party gave their consent for the processing of their personal data

for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party

is part of or for the application at the request of the latter of pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the

data controller;

d) the treatment is necessary to protect the vital interests of the interested party or another

Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers vested in the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued

by the data controller or by a third party, provided that said interests

interests do not prevail or the fundamental rights and freedoms of the interest

cases that require the protection of personal data, in particular when the interested

sado be a child.

The provisions of letter f) of the first paragraph shall not apply to the processing

by public authorities in the exercise of their functions."

III

In the present case, the claimant states that his personal data has been

provided through the WhatsApp application, in various group chats, without your

consent, providing a complaint filed at the National Police Station

of Alcázar de San Juan (Ciudad Real).

In accordance with the available evidence, it is considered that the

facts reported, that is, carrying out an illegal treatment of personal data

through the WhatsApp application, by the claimed entity, without having

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the consent of the claimant, nor any other cause of legitimacy of the claimant.

treatment, supposes a violation of article 6 of the RGPD.

IV

Article 83.5 a) of the RGPD, establishes that "infractions of the provisions

following will be sanctioned, in accordance with section 2, with administrative fines

EUR 20,000,000 maximum or, in the case of a company, an amount

equivalent to a maximum of 4% of the total global annual turnover 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 sense, article 72.1 b) of the LOPDGDD states that "according to 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:

b) The processing of personal data without the concurrence of any of the conditions of

legality of the treatment in article 6 of Regulation (EU) 2016/679."

V

Article 58.2 of the RGPD provides the following: "Each control authority will have

of all the following corrective powers indicated below:

d) order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

i) impose an administrative fine under article 83, in addition to or instead of the

measures mentioned in this section, according to the circumstances of each case

particular;

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This infraction can be sanctioned with a fine of €20,000,000 maximum or,

in the case of a company, an amount equivalent to a maximum of 4% of the

global total annual turnover of the previous financial year, opting for the

of greater amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the

following criteria established by article 83.2 of the RGPD, considering as

aggravating the intentional action of the respondent to use the personal data of the

claimant in the WhatsApp application (article 83.2 b).

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

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE INSEKT FOOD S.L. with NIF B01594860, for the infringement of the

article 6 of the RGPD typified in article 83.5.a) of the RGPD, a fine of 4,000 euros

(four thousand euros).

SECOND: NOTIFY this resolution to INSEKT FOOD S.L.

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

Article 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

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, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution 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 month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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 Spanish Agency for Data Protection within a month from

counting 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,

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 by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [https://sedeagpd.gob.es/sede-electronica-

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web/], or through any of the other registers 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 within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

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