 File No.: PS/00290/2021

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

to the following

BACKGROUND

FIRST: On May 4, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate sanctioning procedure against EFS

MAINTENANCE AND TECHNICAL SERVICES, S.L. (hereinafter, the claimed party),

through the Agreement that is transcribed:

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File No.: PS/00290/2021

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in

based on the following

FACTS

FIRST: UNION SINDICAL OBRERA (USO-STA MADRID), on behalf of and

representation of A.A.A. (hereinafter, the CLAIMANT party) on the 8th of

February 2021 filed a claim with the Spanish Agency for the Protection of

Data. The claim is directed against EFS MAINTENANCE AND SERVICES

TECHNICIANS, S.L. with NIF B61782801 (hereinafter, EFS). The reasons on which the

claim are as follows:

He states that the company communicates his work situations to the Committee of Company without any justification and with the intention of harming it.

Along with the claim, provide a copy of the referral letter by the EFS to the Committee of Company, to which is attached a copy of the letter delivered to the CLAIMANT related to the request for union hours, where it is reflected that he did not formulate properly the request and the service was affected and in which you are required to when formulating the time credit requests, verify if what is actually requested corresponds to what is really needed.

In the letter sent to the Company Committee, the name, surname and ID number appear of the CLAIMANT, as well as information regarding the request for hourly credits and unfulfilled work shifts.

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), said claim was transferred to EFS, so that proceed to its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements set forth in the regulations of Data Protection.

The transfer was notified on March 9, 2021 by electronic notification, in accordance with article 41 of Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations (LPACAP).

On April 19, 2021, this Agency received a written response indicating EFS the following:

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The company only communicated to the Works Council the decision to

warn the maid, which she usually does.

The communication has been made in accordance with article 64 of the Statute

of the Workers, to comply with the rights to information and

consultation of the Works Council, specifically, their right to be informed and

consulted on issues that may affect workers

(in this case it has affected the shift system and the way to request the credit

schedule they have); your right to be informed about the rate of

absenteeism in the company (in this case it is a lack of attendance).

Therefore, in no case does it affect particularly sensitive personal data.

that should be protected.

- No transfer has been given to "third parties", but to the members of the Committee of

Company, who are entitled to have access to this information, the

which must have signed a confidentiality document regarding the

data of the company and workers to which they have access as a consequence

of your charge.

THIRD: On June 7, 2021, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant was admitted for processing.

FOUNDATIONS OF LAW

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Competition

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the

European Parliament and of the Council of April 27, 2016 on the protection of

individuals with regard to the processing of personal data and the free

circulation of these data (RGPD) recognizes each control authority, and according to what

established in articles 47 and 48 of the LOPDGDD, the Director of the Agency

Spanish Data Protection is competent to initiate and resolve this

process.

II

Previous issues

In the present case, in accordance with the provisions of article 4.1 of the RGPD, it consists

carrying out personal data processing, since EFS performs, among

other treatments, the collection, registration, conservation, consultation, use,

communication, access, deletion, of the following personal data of people

such as: name and surname, identification number, telephone number,

address.

EFS carries out this activity in its capacity as data controller, since

is the one who determines the ends and means of such activity, by virtue of article 4.7 of the

GDPR.

III

Article 5.1.f) of the RGPD

Article 5.1.f) “Principles related to treatment” of the RGPD establishes:

"1. The personal data will be:

(…)

f) processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against

its loss, destruction or accidental damage, through the application of technical measures

or appropriate organizational structures (“integrity and confidentiality”).”

In the present case, the principle of confidentiality has been violated since it is known that

the personal data of the complainant were improperly communicated to the Committee

of Company when EFS sent him the letter of warning or requirement that he addressed

to the claimant in relation to hourly credit requests.

Regarding what was stated by the SAI regarding the fact that it had to communicate it to the Committee

of Company in accordance with article 64 of the Workers' Statute, to

comply with the rights of information and consultation of the Company Committee, in

Specifically, their right to be informed and consulted on those issues that

may affect workers, it should be noted that this right should not

be interpreted as generically as the defendant understands -because it would mean

accept that absolutely any issue that affects the worker should

communicated to the Committee - but must be interpreted by putting it in context with

all the aforementioned precept, as required by it.

Article 64.1 of the Workers' Statute, regarding the Rights of

information and consultation and competences, establishes that the works council will have

right to be informed and consulted by the employer on those issues

that may affect the workers, as well as on the situation of the company and the

evolution of employment in the same, in the terms provided for in this article.

Information is understood as the transmission of data by the employer to the committee of

company, so that it is aware of a specific issue and can

proceed to examination. Consultation means the exchange of views and the

opening of a dialogue between the employer and the works council on a matter

determined, including, where appropriate, the issuance of a prior report by the same

From there, the article develops and specifies what should be reported and/or consulted

Company Committee and with the frequency established. As an example, and without

exhaustive character, expressly determines that it must be informed:

2. d) From the statistics on the rate of absenteeism and the causes, the accidents of

work and occupational diseases and their consequences, rates of

accident rate,…

3. You will also have the right to receive information, at least annually, regarding the

application in the company of the right to equal treatment and opportunities between

women and men…

4. The works council, with the periodicity that proceeds in each case, will have

right to:

b) Know the models of written employment contract used in the company

as well as the documents related to the termination of the employment relationship.

c) Be informed of all sanctions imposed for very serious offenses.

d) Be informed by the company of the parameters, rules and instructions in which the algorithms or artificial intelligence systems that affect decision-making are based on decisions that may affect working conditions, access and maintenance of employment, including profiling.

Likewise, the works council will have the right to receive the basic copy of the contracts…

5. … right to be informed and consulted on the employment situation and structure in the company or in the workplace...

Likewise, you will have the right to be informed and consulted on all decisions of the company that could cause relevant changes in terms of the organization of the work and employment contracts in the company...

Therefore, article 64.1 is not establishing the right of the Company Committee to be informed about absolutely any issue that affects or may affect the worker, but in the way and to the extent that it develops.

In the same way, it is not appropriate to rely on their right to be informed on absenteeism in the company, since the precept refers to the rate of absenteeism, that is, to statistical information and not to the absences of a specific worker.

Regarding what was stated by the SAI that the transferred information does not affect especially sensitive personal data that must be protected,

warns that the fundamental right to the protection of personal data, collected in Article 18.4 of the Spanish Constitution, refers to any data of the person in the spheres in which it operates, so that the data related to the name and surnames, DNI number and circumstances related to requests for hourly credits and to work shifts fulfilled or not fulfilled, are data protected by the regulations

in terms of data protection.

Therefore, all personal data about natural persons are subject to the protection

provided by the regulations on the protection of personal data, not being necessary

for this, they must be "sensitive" or have the character of categories

special data (article 9 of the RGPD). For these purposes, it is appropriate to cite the STC

292/2000, of November 30, when it indicates that data protection is not reduced

to the intimate data of the person, but to any type of personal data, whether or not

intimate, whose knowledge or use by third parties may affect their rights, whether

fundamental or not, because its object is not only individual intimacy.

Thus, the RGPD -and, therefore, the rest of the regulations on the matter- applies to the treatment

of personal data of natural persons without exception, defining in its article

4.1 as "personal data": any information about an identified natural person or

identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person

whose identity can be determined, directly or indirectly, in particular by

an identifier, such as a name, an identification number,

location, an online identifier or one or more elements of the identity

physical, physiological, genetic, psychic, economic, cultural or social of said person;

The right to data protection protects those affected against the "treatment" of

the same, which is defined in art. 4.2 of the RGPD as any operation on

personal data, whether by automated procedures or not, such as the collection,

registration, organization, structuring, conservation, adaptation or modification,

extraction, consultation, use, communication by transmission, diffusion or any

another form of authorization of access, collation or interconnection, limitation, suppression or

destruction.

In conclusion, the data protection legislation is applicable to the treatment of

data made by an employer regarding workers, with

regardless of the category of personal data in question.

As for what was indicated by SAI, in relation to the fact that no transfer has been given to

"third parties", but to the members of the Company Committee, who are entitled to

have access to that information, who must also have signed a

confidentiality document, it is stated that the Company Committee has the right to

be informed, but with the scope determined by article 64 itself, as stated

has indicated previously. Also, the fact that they are subject to a duty of

secrecy regarding the information that has been communicated to them does not imply a

authorization to have access to all types of personal data of workers.

In this sense, the principle of minimization must be taken into account from the

in view of the proportionality of the processing and its purpose. Different standards

labor laws and regulations, including the Workers' Statute,

they attribute a wide range of powers to the representatives of the people

women workers and in particular the works council and union delegates

(art.10.3 of the Organic Law on Freedom of Association). In some cases, the exercise

These faculties may involve data processing.

However, this potential access to personal data must be governed by the

strict compliance with data protection principles: they may only

communicate data when it is strictly necessary for the fulfillment of the

duties that the Workers' Statute establishes for the company. and in all

those cases in which the information can be presented statistically or

anonymized allowing the committee to fulfill its functions, this will be chosen

method. Therefore, if it is not absolutely necessary, you should not

include the DNI along with the name and surname of the worker, as has happened

in the present case.

Finally, it should be noted that all of the foregoing must be understood without prejudice to the fact that the

art. 88 of the RGPD allows that, through legal provisions or collective agreements,

more specific rules are established in order to offer a better and more

adapted protection of the right to data protection in the field of

labor Relations.

For its part, article 64.9 of the Workers' Statute establishes that

Respecting what is established by law or regulation, collective agreements

may establish specific provisions relating to the content and modalities

exercise of the information and consultation rights provided for in this article, as well as

as well as the most appropriate level of representation to exercise them.

In the present case, however, no other regulations have been justified by the SAI.

sector or collective agreement that justifies the communication to the Company Committee of

the information that contained personal data of the claimed party (DNI number and

data related to possible breaches of schedules) which supposes a violation

of the duty of confidentiality.

For all the above and in accordance with the evidence available in

this agreement to initiate the sanctioning procedure, and without prejudice to what

result of the investigation, it is considered that the known facts could be

constituting an infraction, attributable to SAIs, for violation of article 5.1.f) of the

GDPR.

IV

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

If confirmed, the aforementioned infringement of article 5.1.f) of the RGPD could lead to the

commission of the offenses typified in article 83.5 of the RGPD that under the

The heading "General conditions for the imposition of administrative fines" provides:

“The infractions of the following dispositions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of a maximum of EUR 20,000,000 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 largest 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 "Infringements" 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 “Infringements considered very

serious” of the LOPDGDD indicates:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

considered very serious and will prescribe after three years the infractions that suppose

a substantial violation of the articles mentioned therein and, in particular, the

following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679. (…)"

v

Sanction for the infringement of article 5.1.f) of the RGPD

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

accordance with the evidence available at the present time.

agreement to initiate sanctioning proceedings and without prejudice to what results from the

instruction, taking into account the circumstances of the case and the criteria established

article 83.2 of the RGPD and article 76.2 of the LOPDGDD, with respect to the

infraction committed by violating the provisions of article 5.1.f) of the RGPD, allows

initially set a fine of €1,000 (THOUSAND EUROS).

Therefore, in accordance with the foregoing, by the Director of the Agency

Spanish Data Protection,

HE REMEMBERS:

FIRST: START A SANCTION PROCEDURE for EFS MAINTENANCE AND

SERVICIOS TÉCNICOS, S.L., with NIF B61782801, for the alleged infringement of the

article 5.1.f) of the RGPD, typified in Article 83.5 of the RGPD.

SECOND: THAT for the purposes provided in article 64.2 b) of Law 39/2015, of 1

of October, of the Common Administrative Procedure of the Public Administrations

(hereinafter, LPACAP), the sanction that may correspond, without prejudice to what

result of the instruction, would be:

ONE THOUSAND EUROS (€1,000), for the alleged infringement of article 5.1.f) of the RGPD, typified

in Article 83.5 of the RGPD.

THIRD: APPOINT R.R.R. as instructor. and, as secretary, to S.S.S.,

indicating that any of them may be challenged, where appropriate, in accordance with the

established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime

Legal Department of the Public Sector (LRJSP).

FOURTH: INCORPORATE to the disciplinary file, for evidentiary purposes, the

claim filed by the claimant and its documentation.

SIXTH: NOTIFY this agreement to EFS MAINTENANCE AND SERVICES

TÉCNICOS, S.L., with NIF B61782801, granting a hearing period of ten days

able to formulate the allegations and present the evidence that it considers

convenient. In your brief of allegations you must provide your NIF and the number of

procedure at the top of this document.

If within the stipulated period it does not make allegations to this initial agreement, the same

may be considered a resolution proposal, as established in article

64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, you may recognize your
responsibility within the term granted for the formulation of allegations to the
this initiation agreement; which will entail a reduction of 20% of the
sanction to be imposed in this proceeding. With the application of this
reduction, the sanction would be established at 800 euros, resolving the
procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this
procedure, carry out the voluntary payment of the proposed sanction, which
will mean a reduction of 20% of its amount. With the application of this reduction,
the sanction would be established at 800 euros and its payment will imply the termination of the
process.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding
apply for the acknowledgment of responsibility, provided that this acknowledgment
of the responsibility is revealed within the period granted to formulate
arguments at the opening of the procedure. The voluntary payment of the referred amount
in the previous paragraph may be done at any time prior to the resolution. In
In this case, if it were appropriate to apply both reductions, the amount of the penalty would be
set at 600 euros.

In any case, the effectiveness of any of the two reductions mentioned will be
conditioned to the abandonment or renunciation of any action or resource in via
administrative against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts

indicated above (800 euros or 600 euros), you must make it effective through your

Deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the

Spanish Agency for Data Protection in the banking entity CAIXABANK, S.A.,

indicating in the concept the reference number of the procedure that appears in the

heading of this document and the reason for the reduction of the amount to which

welcomes

Likewise, you must send proof of payment to the General Subdirectorate of

Inspection to proceed with the procedure in accordance with the quantity

entered.

The procedure will have a maximum duration of nine months from the

date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of

performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the

LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On May 7, 2022, the claimed party has proceeded to pay

the sanction in the amount of 800 euros making use of one of the two reductions

provided for in the Start Agreement transcribed above. Therefore, there is no

accredited acknowledgment of responsibility.

C/ Jorge Juan, 6

28001 – Madrid

THIRD: The payment made entails the waiver of any action or resource in via

against the sanction, in relation to the facts referred to in the

Home Agreement.

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 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 Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: “The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures.”

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility,

the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature, but the

inadmissibility of the second, the voluntary payment by the alleged perpetrator, in

any time prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the

competent body to resolve the procedure will apply reductions of, at least,

20% of the amount of the proposed sanction, these being cumulative with each other.

The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased

regulations."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00290/2021, of

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to EFS MAINTENANCE AND

TECHNICAL SERVICES, S.L.

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 as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure Common of the Public Administrations, the interested parties may file an appeal contentious-administrative 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.

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