

936-031219

Procedure No.: PS/00455/2019

RESOLUTION R/00114/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00455/2019, instructed by the Agency

Spanish Data Protection Agency to AEMA HISPANICA, S.L., given the complaint

presented by A.A.A., and based on the following,

BACKGROUND

FIRST: On January 29, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against AEMA HISPANICA,

SL (hereinafter, the claimed party), through the Agreement that is transcribed:

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Procedure No.: PS/00455/2019

935-160419

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency before

the entity, AEMA HISPANICA, S.L. with CIF.: B45540846, (hereinafter, "the entity

claimed), by virtue of a complaint filed by D. A.A.A. (hereinafter, "the

claimant") and based on the following:

FACTS

FIRST: On 05/15/19 he entered this Agency (through the Institute

Gallego de Consumption), brief presented by the claimant, in which he stated what

following: "I received an email with the payroll from a co-worker.

worked. I enclose a copy of the communication from the company.

SECOND: In view of the facts set forth in the claim and the documents

provided by the claimant, the General Subdirectorate for Data Inspection proceeded to carry out actions for its clarification, under the powers of

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investigation granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD). A) Yes, dated 08/07/19, an information request is addressed to the entity, being notified on 08/09/19, according to a certificate issued by the Service of Electronic Notifications and Electronic Address Enabled.

THIRD: As of 01/15/20, the claimed entity has NOT yet sent this Agency, no type of information or documentation regarding the facts denounced.

FOURTH: In view of the reported facts, in accordance with the evidence that is available, the Data Inspection of this Spanish Agency for the Protection of Data considers that the treatment of personal data that is carried out by the claimed entity, does not meet the conditions imposed by the regulations on data protection, so it is appropriate to open this procedure sanctioning

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016, regarding the Protection of Natural Persons with regard to the Processing of Personal Data and the Free

Circulation of these Data (General Data Protection Regulation, hereinafter RGPD) recognizes each Control Authority and, as established in articles 47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on Data Protection Personal and Guarantee of Digital Rights (hereinafter LOPDGDD), the Director of the Spanish Data Protection Agency is competent to initiate this procedure.

Sections 1) and 2), of article 58 of the RGPD, list, respectively, the investigative and corrective powers that the supervisory authority may provide to the effect, mentioning in point 1.d), that of: "notifying the person in charge or in charge of the treatment of alleged infringements of these Regulations" and in 2.i), that of: "impose an administrative fine under article 83, in addition to or instead of the

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

II

In the present case, according to the claimant and in the absence of a lack of response of the entity claimed to the request made by this Agency, you can see that from the email address ***EMAIL.1 was sent an email to the address ***EMAIL.2 with the subject: PAY EXTRA DECEMBER 2019 B.B.B., on 04/09/19, with the attached file of the payroll of the extra Christmas pay of 2018 of said person.

III

Thus, the known facts could violate recital (39) of the RGPD,
which indicates that: "(...) Personal data must be treated in a way that guarantees
adequate security and confidentiality of personal data, including for
prevent unauthorized access or use of such data and equipment used in the
treatment".

All this could constitute an infringement, attributable to the entity claimed,
for violation of article 5.1.f), of the RGPD, which establishes that: "The data
Personal information will be treated in such a way as to guarantee a
adequate security of personal data, including protection against
unauthorized or unlawful treatment and against loss, destruction or accidental damage,
through the application of appropriate technical or organizational measures ("integrity and
confidentiality")".

For its part, article 72.1.a) of the LOPDGDD considers as "very serious"
purposes of prescription, the: "treatment of personal data violating the
principles and guarantees established in article 5 of the RGPD".

This infraction can be sanctioned with a maximum fine of €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
of greater amount, in accordance with article 83.5.a) of the RGPD.

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IV

In accordance with the precepts indicated, and without prejudice to what results from the

instruction of the procedure, in order to set the amount of the sanction to be imposed in the present case, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the RGD:

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The intentionality or negligence in the infringement. In the present case we are before unintentional negligent action (paragraph b).

- The data controller has NOT taken, to the best of his knowledge, any no mediation to mitigate the damages suffered by the interested parties (section c).

- The data controller has NOT exercised, up to now, no cooperation with the supervisory authority in order to remedy infringement and mitigate the possible adverse effects of the infringement (paragraph F).

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The categories of personal data affected by the infringement,

The data processed in this case, are of a markedly personal nature and therefore person identifiers (section g).

The way in which the supervisory authority became aware of the infringement.

In this case, through a complaint filed by the claimant (section h).

The balance of the circumstances contemplated in article 83.2 of the RGD, with

Regarding the infraction committed by violating the provisions of article 5.1.f) of the RGD allows to set a penalty of 6,000 euros (six thousand euros), considered as “very serious”, for prescription purposes, in 72.1.a of the LOPDGDD.

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

Spanish Data Protection,

HE REMEMBERS:

START: PENALTY PROCEDURE against the entity AEMA HISPANICA, S.L. with

CIF.: B45540846, for the violation of article 5.1.f) of the RGPD, punishable in accordance with the provisions of art. 83 of the aforementioned standard.

APPOINT: Instructor to D.C.C.C. and, as secretary, Ms. D.D.D., indicating that

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

Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Sector

Public (LRJSP).

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

filed by the claimant and his documentation, the documents obtained and

generated by the Subdirector General for Data Inspection during the

research.

WHAT: for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1, of the

Common Administrative Procedure of the Public Administrations, the sanction that

could correspond would be a fine of 6,000 euros (six thousand euros), without prejudice to what

resulting from the instruction.

NOTIFY: this agreement to the entity AEMA HISPANICA, S.L., granting it a

hearing period of ten business days to formulate the allegations and present

tests you deem appropriate.

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, in the event that the sanction to be imposed was a fine, it may recognize its responsibility within the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in this procedure, equivalent in this case to 1,200 euros. With the application of this reduction, the sanction would be established at 4,800 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 the amount of the same, equivalent in this case at 1,200 euros. With the application of this reduction, the sanction would be established in 4,800 euros and its payment will imply the termination of the procedure.

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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 this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at 3,600 euros (three thousand six hundred 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.

If you choose to proceed to the voluntary payment of any of the amounts indicated above, you must make it effective by depositing it in account number ES00 0000 0000 0000 0000 opened in the name of the Spanish Agency for the Protection of Data in Banco CAIXABANK, S.A., indicating in the concept the number of reference of the procedure that appears in the heading of this document and the cause of reduction of the amount to which it is accepted.

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.

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: On February 12, 2020, the claimant has proceeded to pay the

SECOND

sanction in the amount of 3600 euros making use of the two reductions provided in the Startup Agreement transcribed above, which implies the recognition of the responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

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. A sanctioning procedure has been initiated, if the offender acknowledges his

responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified 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 each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction.

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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/00455/2019, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to AEMA HISPANICA, 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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