

□ File No.: PS/00605/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the complaining party) dated October 30,
2020 filed a claim with the Spanish Data Protection Agency. The
claim is directed against D. B.B.B. with NIF ***NIF.1 (hereinafter, the part
claimed). The grounds on which the claim is based are as follows:

“THIS ONLINE TRADING WEBSITE, WHICH IS A SCAM, USES MY
NAME, SURNAME AND IMAGE (MY AND THAT OF VARIOUS COLLEAGUES OF
MY WORK)

"ABOUT US"

<https://www.elexoutlet.es/about-us/> IMAGES THAT HAVE BEEN EXTRACTED FROM THE PAGE
WEB OF ME

CONSENT

<https://www.macnificos.com/quienes-somos> AND THEY ARE USING IT FOR PURPOSES
DOUBTFUL”.

IN YOUR SECTION

COMPANY WITHOUT ME

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 the claimed party, to
to proceed with 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.

No response to this letter has been received.

THIRD: On February 10, 2021, the Director of the Spanish Agency for

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

FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in

matter, by virtue of the investigative powers granted to the authorities of

control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of

Data Protection, hereinafter RGPD), and in accordance with the provisions of the

Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following ends:

During these proceedings, the following entities have been investigated:

Elexoutlet, S.L. and D.B.B.B..

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Result of the investigation actions:

On November 3, 2021, it is verified that when consulting the url elexoutlet.es on the internet, it does not return any web pages.

On November 23, 2021, it is verified that the owner of the website elexoutlet.es is B.B.B..

On November 23, 2021, it is verified that in the url

<https://www.elexoutlet.es/about-us/> there are photographs of people matching the

existing at <https://www.macnificos.com/quienes-somos>.

On December 3, 2021 Tecnocrática Data Center S.L. sends to this Agency the following information and statements:

1.

two.

That the owner of the elexitoutlet.es domain is, at the time of registration, B.B.B..

That the domain, in its registry, now appears inactive.

On December 3, 2021, a request for information is sent to the denounced. The notification is made by postal mail. No response received.

FIFTH: On January 12, 2022, 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 a) of the GDPR.

SIXTH: After the term granted for the formulation of allegations to the agreement of the beginning of the procedure, it has been verified that no allegation has been received 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:

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PROVEN FACTS

FIRST: It is stated that the owner of the elexoutlet.es website is the claimant.

SECOND: It is verified that the online commerce website uses the name,

surname and image of the complaining party in its "who we are" section

<https://www.elexoutlet.es/about-us/> images that have been extracted from the website of the company of the complaining party without legal basis for it.

THIRD: On December 3, 2021 Tecnocrática Centro de Datos S.L. refer to this Agency the following information and statements:

1.

That the owner of the elexoutlet.es domain is, at the time of registration, B.B.B..

That the domain, in its registry, now appears inactive.

two.

FOURTH: On January 12, 2022, this sanctioning procedure was initiated by the violation of article 6 of the RGPD, being notified the same day. not having made allegations, the party complained against, to the initial agreement.

FOUNDATIONS OF LAW

Yo

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

The exposed facts may imply, on the part of the claimed party, the

Commission of an infringement of article 6.1 of the RGPD that establishes the assumptions that

allow the processing of personal data to be considered lawful.

Article 6 of the RGPD, "Legality of the treatment", details in its section 1 the

assumptions in which the processing of third party data is considered lawful:

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"1. The treatment will only be lawful if it meets at least one of the following conditions:

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

personal for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;

(...)"

The infraction for which the claimed entity is held responsible is typified in article 83 of the RGPD that, under the heading "General conditions for the imposition of administrative fines", states:

"5. Violations of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of 20,000,000 Eur 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."

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements considered very serious" provides:

"1. Based on the provisions of article 83.5 of the Regulation (U.E.) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in it and, in particular the following:

(...)

a) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679."

According to the available evidence, it is considered proven that the claimed party published on its website the name, surnames and image of the complaining party, and therefore is responsible for the violation of confidentiality when disseminating said data, for which it is considered that it has violated article 6.1 due to an illicit treatment of the personal data of the party claimant.

IV

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Without prejudice to the provisions of article 83 of the RGPD, art. 58.2 b)

provides the following:

“2 Each supervisory authority shall have all of the following corrective powers listed below:

(...)

b) send a warning to any person responsible or in charge of the treatment when the treatment operations have violated the provisions of this Regulation;”

In the present case, since the web page has disappeared, it allows us to consider

a decrease in fault in the facts, so it is considered in accordance with

Law, not to impose a sanction consisting of an administrative fine and replace it with

direct a warning to the claimed party. Likewise, it is not appropriate to urge the adoption

of additional measures as it has been proven that said website has

missing.

There are no previous sanctions on the claimed party, the activity of the

claimed is not the usual data processing, nor was it intended to obtain

Benefits.

The website has disappeared.

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

graduation of the sanctions whose existence has been proven, the Director of the

Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS D. B.B.B., with NIF ***NIF.1, for a violation of Article 6 of the

RGPD, typified in Article 83.5 of the RGPD, a warning.

SECOND: NOTIFY this resolution to D.B.B.B..

THIRD: In accordance with the provisions of article 50 of the LOPDGDD, 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

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

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writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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