 File No.: EXP202105687

RESOLUTION OF SANCTIONING 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 claiming party) dated November 4,

2021 filed a claim with the Spanish Data Protection Agency. The

claim is directed against CÍTRICOS TANTA, S.L. with NIF B90159047 (in

below, the claimed party). The reasons on which the claim is based are the following:

following:

The claiming party states that the claimed entity has used their data

registering them without their consent in the General Regime of

Social Security workers, dated October 26, 2020.

In addition, it indicates that it has never had contact with the claimed party, and that the

facts were denounced before the Ministry of Labor and Social Economy, and on

February 2021, they informed him that after the appropriate verifications, they proceeded

annul the registration carried out by the claimed entity, for which reason it proceeded to denounce the

facts before the police.

And, provide the following documentation:

Complaint before the General Directorate of Police, agency (...) Crowded

XXXXX/21 of 11/4/21 which are extensions of proceedings XXX/20, dated

01/11/2020, where he filed a complaint for the loss of a Shoulder Bag which

it contained all his documentation (DNI and Driving License).

Copy of the letter received from the Ministry of Labor and Social Economy, which states

that they proceed to annul ex officio in the General Treasury of the Social Security the registration

of the referred worker (claimant) for the company Cítricos Tanta, S.L. for the period

from 10/26/2020 to 11/2/2020.

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

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

forward LOPDGDD), said claim was transferred to the claimed party, for

to proceed with its analysis and inform this Agency within a month of the

actions carried out to adapt to the requirements established in the regulations of

Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of

October 1, of the Common Administrative Procedure of the Administrations

Public (hereinafter, LPACAP), was collected on December 27, 2021 as

It appears in the acknowledgment of receipt that is in the file.

No response has been received to this letter of transfer.

THIRD: In accordance with article 65 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights

(LOPDGDD), when submitted to the Spanish Data Protection Agency

(hereinafter, AEPD) a claim, it must evaluate its admissibility for processing,

must notify the claimant of the decision on the admission or non-admission to

procedure, within three months from the date the claim was entered into this

Agency. If, after this period, there is no such notification, it will be understood

that the processing of the claim continues in accordance with the provisions of Title

VIII of the Law. Said provision is also applicable to the procedures

that the AEPD would have to process in the exercise of the powers assigned to it

attributed by other laws. In this case, taking into account the above

and that the claim was filed with this Agency, on November 4, 2021,

The claimant was informed that their claim dated February 4, 2022

was admitted for processing after three months had elapsed since it had

entry into the AEPD.

FOURTH: On April 22, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1,

of the Common Administrative Procedure of Public Administrations (in

hereinafter, LPACAP), for the alleged infringement of Article 6.1 of the GDPR, typified in

Article 83.5 of the GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in

Law 39/2015, of October 1, on the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP), the claimed party submitted a written

of allegations in which, in summary, he stated: "that the company CÍTRICOS

TANTA, S.L., received the claimant's DNI data through a manager through

telephone conversation, in order to mechanize the discharge for the day 10/26/2020, already

that that same day his incorporation as a worker was scheduled to provide his

services such as Peón Agrícola. However, he never got to work.

although the claimant did provide the data of his ID to the handler with a view to his

imminent incorporation to work, which never came for reasons that are not

we know and only the worker knows.

Therefore, the aforementioned company proceeded as legally required in terms of

Social Security affiliation according to RD 84/1996, to process your registration for the day

10/26/2020. When several days passed, specifically, on 11/02/2020, without the

worker to join proceeded to leave, however by mistake the company

communicated that he had worked one day, an error that the Treasury has already corrected, so

Therefore, the company assumes that there has been an error at the level of affiliation with the

communication of a day, what it does not assume is that the processing of

his registration irregularly, since if he was initially expected to join,

since it was the claimant who provided his data verbally through

telephone conversation with the aforementioned manager.

It informed that it should be taken into account that the processing of the claimant's data has been

necessary for the performance of a contract to which the interested party is a party, such as

indicates section 1.b of article 6 of the GDPR, regardless of whether

the employment relationship has not been consummated because it has not been incorporated, but the

company was obliged to register as indicated in section 3.1 of article 32

of RD 84/1996 (Social Security affiliation Regulations): “Applications must

be presented by the obligated subjects prior to the beginning of the provision

of services by the worker

In no case, the use of the data can be affirmed that it has been for lucrative purposes

or due to bad faith on the part of the company, which even had, due to the error at the level of

affiliation, than paying a day's contributions for a worker who did not pay their

services.

It requests that the sanctioning procedure be annulled.

SIXTH: On June 6, 2022, the procedure instructor agreed to practice

the following tests:

1. The claim filed by D.

A.A.A. and its documentation, the documents obtained and generated during the phase

admission to process the claim.

2. Likewise, it is considered reproduced for evidentiary purposes, the allegations to the agreement

initiation of the referenced sanctioning procedure, presented by CÍTRICOS

TANTA, S.L., and the documentation that accompanies them.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

PROVEN FACTS

FIRST: It is verified that the claimed party has used the personal data of the

claimant to register him without his consent or any other legitimizing basis

in the General Regime of Social Security Workers, dated 26

October 2020.

SECOND: A complaint is filed with the General Directorate of the Police, agency

(...) Attestation XXXXXX/21 of 11/4/21 that are extensions of proceedings XXX/20,

dated 01/11/2020, where he filed a complaint for the loss of a Shoulder Bag on

which contained all his documentation (DNI and Driving License).

Copy of the letter received from the Ministry of Labor and Social Economy, which states

that they proceed to annul ex officio in the General Treasury of the Social Security the registration

of the referred worker (claimant) for the company Cítricos Tanta, S.L. for the period

from 10/26/2020 to 11/2/2020.

THIRD: The claimed party acknowledges that it received the data of

DNI of the claimant through telephone conversation, in order to mechanize the

registration for 10/26/2020, since that same day its incorporation was scheduled

as a worker to provide his services as an Agricultural Laborer.

FOURTH: The claimed party acknowledges that on 11/02/2020, he proceeded to cancel the

claimant. However, he mistakenly reported that he had worked one day, therefore

the defendant assumes that there has been an error at the affiliation level with the communication

of a day, what he does not recognize is that his discharge has been processed

irregularly, since it was the claimant who provided his data orally

through telephone conversation the aforementioned manager.

SEVENTH: On July 13, 2022, a resolution proposal was formulated,

proposing:

<<That the Director of the Spanish Data Protection Agency sanctions

CÍTRICOS TANTA, S.L., with NIF B90159047, for a violation of Article 6.1 of the

GDPR, typified in Article 83.5 of the GDPR, with a fine of 5,000 euros (five

thousand euros)>>.

FUNDAMENTALS OF LAW

Yo

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

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

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

Organic 3/2018, of December 5, 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: "Procedures

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

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

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

In response to the allegations presented by the defendant in which he states

that discharged the claimant on October 26, 2020 and when they passed

several days, specifically, on November 2 of the same year, without the worker

incorporated proceeded to lower it.

Article 35 of Royal Decree 84/1996, of January 26, which approves the

General regulation on registration of companies and affiliation, registrations, cancellations and

variations of data of workers in Social Security, establishes:

<<Special effects of the registrations and dismissals of workers

1. The recognition of the registration of the worker determines the situation of registration of the same in

the Social Security Regime that corresponds due to their activity or that of

your company, with the rights and obligations inherent to said situation in accordance with

the regulatory norms of the Regime in which it is framed.

1st In all cases, registrations whose applications have been submitted with

Prior to the provision of services, they will only take effect, in order to the

rights and obligations inherent to said discharge situation, from the day on which

start the activity.

Registrations whose applications have been submitted prior to the initiation of

the provision of services under the terms regulated in article 32.3. 1st of this

regulations, will not take effect when the person who formulated them notifies the

initiation of the provision of services of the workers to whom they are

refer prior to the day indicated for such initiation, by means or

procedures used to request these prior registrations>>.

Well, it is important to highlight the lack of diligence of the claimed party since

it did not proceed to discharge the claimant until several days had passed. Therefore, it came out

effects of discharge, by not notifying the non-initiation of the provision of services of the

worker.

As established by the General Treasury of the Social Security if a worker

does not show up for work, the company has a period of 72 hours to cancel the registration in

Social Security, which the defendant did not do, and therefore did not act with the

due dilegence.

In short, it should be noted that respect for the principle of legality of the data requires

that it is accredited that the processing of the data is carried out on the basis of

any of the causes of legitimacy contained in art. 6 of the GDPR and deploy a

reasonable diligence essential to prove that point, which requires, in

those cases in which the basis of legitimation is that contained in section b) of the

art. 6.1 of the GDPR, that the owner of the data has consented to the contracting and that the

responsible for the treatment can accredit it, because if they do not act like this, the result would be

empty the content of the principle of legality.

In accordance with the evidence available to the defendant, it violated

Article 6.1 of the GDPR. every time you carried out the processing of personal data

of the complaining party without legitimacy to do so. The claimant's personal data

were incorporated into the company's information systems, without any

accredited that had a legal basis for the collection and subsequent processing of

your personal information.

Consequently, it has processed personal data without having

accredited that has the legal authorization to do so.

In this regard, and this is the essential, the defendant does not prove the legitimacy for the

treatment of the claimant's data.

Respect for the principle of legality that is in the essence of the fundamental right of

protection of personal data requires that it be proven that the

responsible for the treatment displayed the necessary diligence to prove that

extreme. If they do not act in this way - and if this Agency does not demand it in this way, which is responsible for ensuring

for compliance with the regulations governing the right to data protection of

personal character - the result would be to empty the content of the principle of legality.

Thus, it is estimated that the facts that are submitted to the evaluation of this Agency

they constitute a violation of article 6.1 of the GDPR.

II

Article 6 of the GDPR, "Legacy of the treatment", details in its section 1 the

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

"1. Processing will only be lawful if it meets at least one of the following

conditions:

a) the interested party gave his consent for the processing of his 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;

(…)”

The infringement for which the claimed party is held responsible is classified as

in article 83 of the GDPR that, under the heading "General conditions for the

imposition of administrative fines”, it states:

"5. Violations of the following provisions will be penalized, in accordance with the

section 2, with administrative fines of a maximum of 20,000,000 Eur or, in the case of

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

overall annual total business of the previous financial year, opting for the one with the highest

amount:

a) The basic principles for the treatment, including the conditions for the

consent in accordance with articles 5,6,7 and 9.”

The Organic Law 3/2018, of Protection of Personal Data and Guarantee of the

Digital Rights (LOPDGDD) in its article 72, under the heading "Infractions

considered very serious” provides:

"1. Based on what is established in article 83.5 of Regulation (U.E.) 2016/679,

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

a substantial violation 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 established in article 6 of the

Regulation (EU) 2016/679.”

IV.

The determination of the sanction that should be imposed in the present case requires

observe the provisions of articles 83.1 and 2 of the GDPR, precepts that,

respectively, provide the following:

"1. Each control authority will guarantee that the imposition of fines

administrative proceedings under this article for violations of this

Regulations indicated in sections 4, 9 and 6 are in each individual case

effective, proportionate and dissuasive.”

"2. Administrative fines will be imposed, depending on the circumstances of each

individual case, in addition to or in lieu of the measures contemplated in

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question, as well as

such as the number of interested parties affected and the level of damages that

have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the person in charge or in charge of the treatment to

settle the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, habi-

gives an account of the technical or organizational measures that have been applied by virtue of the

articles 25 and 32;

e) any previous infringement committed by the controller or processor;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what

extent;

i) when the measures indicated in article 58, paragraph 2, have been ordered

previously against the person in charge or the person in charge in relation to the

same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to mechanisms of

certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or

indirectly, through the infringement.”

Within this section, the LOPDGDD contemplates in its article 76, entitled

"Sanctions and corrective measures":

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation

(UE) 2016/679 will be applied taking into account the graduation criteria

established in section 2 of said article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of data processing.

personal information.

c) The benefits obtained as a consequence of the commission of the infraction.

d) The possibility that the conduct of the affected party could have led to the

commission of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the

violation, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate.

h) Submission by the person responsible or in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which

there are controversies between those and any interested party.

3. It will be possible, complementary or alternatively, the adoption, when appropriate,

of the remaining corrective measures referred to in article 83.2 of the

Regulation (EU) 2016/679."

In accordance with the precepts transcribed, for the purpose of setting the amount of the sanction of

fine to be imposed on the entity claimed as responsible for a classified offense

in article 83.5.a) of the GDPR and 72.1 b) of the LOPDGDD are considered concurrent in

the present case the following factors:

As aggravating circumstances:

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That the facts that are the object of the claim are attributable to a lack of

diligence of the requested party, since it has not provided any document

explaining the origin of the claimant's data that have been processed.

(article 83.2.b, GDPR). The Judgment of the National Court of 10/17/2007

(rec.63/2006), in which, with respect to entities whose activity involves

continuous processing of customer data, indicates that "...the Supreme Court comes

understanding that imprudence exists whenever a legal duty of

care, that is, when the offender does not behave with the required diligence. And in the

assessment of the degree of diligence, professionalism must be especially weighted

or not of the subject, and there is no doubt that, in the case now examined, when the

The appellant's activity is constant and abundant handling of personal data.

personal rigor and exquisite care must be insisted upon in adjusting to the

legal precautions in this regard."

It is appropriate to graduate the sanction to be imposed on the defendant and set it at the amount of €5,000

for violation of article 83.5 a) GDPR.

Therefore, in accordance with the applicable legislation and assessed the criteria of

graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE CÍTRICOS TANTA, S.L., with NIF B90159047, for a

infringement of Article 6.1 of the GDPR, typified in Article 83.5. a) of the GDPR, a

a fine of 5,000 euros (five thousand euros).

SECOND: NOTIFY this resolution to CÍTRICOS TANTA, S.L.

THIRD: Warn the penalized person that they must make the imposed sanction effective

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

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

Common of Public Administrations (hereinafter LPACAP), within the payment period

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, by means of its income, 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, open in the name of the Agency

Spanish Data Protection Agency at the bank CAIXABANK, S.A.. In the event

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date 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 or immediately following business month, and if

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

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

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from

count 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 for in article 46.1 of the referred Law.

Finally, it is noted 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 through writing addressed to the Spanish Data Protection Agency, presenting it through of the Electronic Registry of the Agency [https://sedeagpd.gob.es/sede-electronica-web/], or through any of the other registries 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 proceedings within a period of two months from the day following the Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

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