

□ Procedure No.: PS/00173/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) dated November 19, 2019
filed a claim with the Spanish Data Protection Agency. The
claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed one). The
The reasons on which the claim is based are, in short, that the company for which
worked and the agency that advised it, have violated the regulations of
data protection by improperly identifying you as the author of an infringement of
traffic.

SECOND: Upon receipt of the claim, the Subdirector General for
Data Inspection proceeded to carry out the following actions:

On 01/17/2020, reiterated on 02/21/2020, the claim was transferred to the claimant
submitted for analysis and communication to the claimant of the decision adopted
regard. Likewise, it was required that within a month he send to the
Agency certain information:

- Copy of the communications, of the adopted decision that has been sent to the
claimant regarding the transfer of this claim, and proof that
the claimant has received communication of that decision.
- Report on the causes that have motivated the incidence that has originated the
claim.
- Report on the measures adopted to prevent the occurrence of
similar incidents.

- Any other that you consider relevant.

On 02/28/2020, ESTEVEZ Y MAESO, a company whose corporate purpose is consulting and legal management of companies and professionals, pointed out that it has maintained a relationship contract with the claimed party, which required the processing of personal data responsibility of the same; that he attended the consultancy on the occasion of a notification of complaint that he had received for the bad parking of a vehicle of which he is the owner, intended for professional use and that at the time of the infringement was led by his employee the claimant, asking them to present the documentation that identified the claimant as a driver at the time of the infraction before the competent body of the Public Administration.

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THIRD: On 06/08/2020, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim filed by the claimant against the respondent.

FOURTH: On 06/23/2020, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infringement of article 5.1.f) of the RGPD, sanctioned in accordance with the provisions of the article 83.5.a) of the aforementioned RGPD.

FIFTH: Once the initiation agreement has been notified, the one claimed at the time of this The resolution has not presented a written statement of allegations, for which reason the indicated in article 64 of Law 39/2015, of October 1, on the Procedure Common Administrative Law of Public Administrations, which in section f)

establishes that in the event of not making allegations within the period established on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, reason why a Resolution is issued.

SIXTH: Of the actions carried out in this proceeding, they have been accredited the following:

PROVEN FACTS

FIRST: On 11/19/2019 the claimant submitted a written document to the Spanish Agency for Data Protection, noting that the company for which you worked at the time and the agency that advised her have violated the regulations on the protection of personal data by improperly identifying you as the author of an infringement of traffic.

SECOND: The claimant has provided proof that the employment relationship is expired on 10/22/17, prior to the commission of the offense on 10/31/2017. Contribute work life report, letter of dismissal and traffic fine.

THIRD: ESTEVEZ Y MAESO, S.L. company whose corporate purpose is consulting and legal management of companies and professionals, in a letter dated 03/04/2020, indicates that it has maintained a contractual relationship with the respondent and indicates that the latter "went to n our offices on the occasion of a complaint notification that it had received for the bad parking of a vehicle of which he is the owner. This vehicle is intended for professional use and informs us that at the time of the infraction it was driven by your employee the claimant, for which you also request us to present the Documentation identifying the complainant as a driver at the time of the infraction before the competent body of the Public Administration.

FOURTH: ESTEVEZ Y MAESO, S.L. has provided a Data Protection contract Personal signed with the claimed on 05/25/2018 where he holds the status of

treatment manager.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, 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 solve this procedure.

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Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations, in its article 64 "Agreement of initiation in the procedures of a sanctioning nature", provides:

II

"1. The initiation agreement will be communicated to the instructor of the procedure, with transfer of how many actions exist in this regard, and the interested parties will be notified, understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the rules regulators of the procedure so provide.

2. The initiation agreement must contain at least:

- a) Identification of the person or persons allegedly responsible.
- b) The facts that motivate the initiation of the procedure, its possible rating and sanctions that may apply, without prejudice to what result of the instruction.

c) Identification of the instructor and, where appropriate, Secretary of the procedure, with express indication of the system of recusal of the same.

d) Competent body for the resolution of the procedure and regulation that attribute such competence, indicating the possibility that the presumed responsible can voluntarily acknowledge their responsibility, with the effects provided for in article 85.

e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those that may be adopted during the same in accordance with article 56.

f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in If you do not make allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when it contains a precise statement about the responsibility imputed.

3. Exceptionally, when at the time of issuing the initiation agreement there are not sufficient elements for the initial qualification of the facts that motivate the initiation of the procedure, the aforementioned qualification may be carried out in a phase later by drawing up a List of Charges, which must be notified to the interested".

In application of the previous precept and taking into account that no formulated allegations to the initial agreement, it is appropriate to resolve the initiated procedure.

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The facts denounced materialize in the improper identification of the claimant as the author of a traffic violation when he no longer had a relationship with the claimed party, having used their data illegally.

Article 58 of the RGPD, Powers, states in its point 2 that:

"two. Each supervisory authority will have all of the following powers corrections listed below:

(...)

b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;

(...)

i) impose an administrative fine under article 83, in addition to or in instead of the measures mentioned in this paragraph, depending on the circumstances of each particular case;

(...)"

The treatment carried out by the claimed party constitutes an infringement of article 5, Principles related to the treatment, of the RGPD that establishes that:

"1. The personal data will be:

(...)

d) accurate and, if necessary, updated; all measures will be taken reasonable for the personal data to be erased or rectified without delay that are inaccurate with respect to the purposes for which they are processed ("accuracy");

(...)"

The documentation in the file shows that the defendant violated the article 5 of the RGD, principles related to the treatment, when disclosing the data to a third party of the claimant to identify him as the author of a traffic violation, data that were inaccurate and did not respond to reality since the day the infraction was committed no longer had an employment relationship with the defendant and was not the driver vehicle.

Therefore, personal data will be accurate and, if necessary, updated. Likewise, the aforementioned article states that all the reasonable measures to promptly erase or rectify the data data that are inaccurate with respect to the purposes for which they are processed. In this same sense, recital 39 states that "all reasonable steps to ensure that the data is rectified or erased personal data that are inaccurate".

The obligation of the person in charge to correct the data that is inaccurate is correlative to the right of rectification of the interested parties expressly recognized in article 16 of the regulation.

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The principle of data accuracy determines in turn the need for articulate procedures that allow the person in charge to carry out continuous updating of the data contained in the file in order to respect the aforementioned principle, in such a way that they are exact and adjust to the reality of the interested party.

Article 83.5 a) of the RGPD, considers that the infringement of “the principles basic for the treatment, including the conditions for the consent in accordance with of articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the mentioned article 83 of the aforementioned GDPR, “with administrative fines of €20,000,000 maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount.

The LOPDGDD in its article 72 indicates: “Infringements considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

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

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

(...)

In order to establish the administrative fine to be imposed,

observe the provisions contained in articles 83.1 and 83.2 of the RGPD, which

point out:

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

administrative actions under this article for violations of this

Regulation indicated in sections 4, 5 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 as a substitute for 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 will 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 the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties;

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d) the degree of responsibility of the person in charge or of the person in charge of the

treatment, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

e) any previous infraction committed by the person in charge or the person in charge of the

treatment;

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

remedying the breach and mitigating the possible adverse effects of the breach;

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 if the person in charge or the person in charge notified the infringement and, in such case,

what extent;

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

previously ordered against the person in charge or the person in charge in question

in relation to the same matter, compliance with said measures;

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

certificates 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 realized or losses avoided, direct

or indirectly, through infringement.

In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its

Article 76, "Sanctions and corrective measures", establishes that:

"two. In accordance with the provisions of article 83.2.k) of the 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 treatments

of personal data.

c) The profits obtained as a result of committing the offence.

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

commission of the offence.

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

of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when it is not mandatory, a delegate for the protection of

h) The submission by the person in charge or person in charge, with

voluntary, to alternative conflict resolution mechanisms, in those

assumptions in which there are controversies between those and any

interested."

data.

In accordance with the precepts transcribed, in order to set the amount of the

sanction of a fine to be imposed in the present case for the infraction typified in the article 83.5.a) of the RGPD for which the claimant is responsible, in an assessment initial, the following factors are estimated concurrent:

The merely local scope of the treatment carried out by the claimed party.

Only one person has been affected by the offending conduct.

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The damage suffered by the claimant who, without being a worker of the company, has been charged as the cause of a traffic offense and must go to this instance claiming for the aforementioned facts.

The respondent does not record that he has adopted measures to prevent the produce similar incidents; has not responded to the information request of the Agency, nor to the agreement to initiate the sanctioning procedure, which affects the failure to cooperate with the supervisory authority in order to remedy the infraction and mitigate the possible adverse effects of the same.

There is no evidence that the defendant had acted maliciously, although the performance reveals a serious lack of diligence.

The link between the activity of the offender and the performance of treatment of Personal data.

The respondent is a natural person.

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 B.B.B., with NIF ***NIF.1, for an infraction of article

5.1.d) of the RGPD, typified in article 83.5 of the RGPD, a penalty of €3,000 (three thousand euros).

SECOND: NOTIFY this resolution to B.B.B., with NIF ***NIF.1.

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

art. 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

is between the 1st and 15th of each month, both inclusive, the term to carry out the

voluntary payment will be until the 20th day of the following month or immediately after, and if

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

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

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.

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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 period of month 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, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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