

□ N/Ref.: E/03950/2020 - CO/00149/2020 – A61VM 127580

## RESOLUTION OF FILE OF ACTIONS

Of the actions followed due to the claim filed with the Agency

Spanish Data Protection, for alleged violation of the Regulation (EU)

2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the

protection of natural persons with regard to data processing

personal data and the free circulation of these data (hereinafter, RGPD) and having

based on the following

## FACTS

: Dated May 19, 2020 and entry registration number

## FIRST

017148/2020, a claim filed by FACUA was received by this Agency -

ASSOCIATION OF CONSUMERS AND USERS IN ACTION (hereinafter, the

claimant) against EASYJET AIRLINE COMPANY LTD, for an alleged infringement

of arts. 5.1.f, 32, 33 and 34 of the GDPR.

In summary, the aforementioned claim revealed the following

circumstances:

□ According to various digital media, the company EASYJET, established in

\*\*\*COUNTRY.1, has announced that it has suffered unauthorized access, through

a computer attack, in its database, which would have endangered the

data from 9 million customers, including travel information, emails

emails and even data related to credit cards (this

last, only in the case of about 2200 clients).

□ The security measures implemented by the

responsible, as well as compliance with the duty of notification, both to the

competent control authority and affected individuals.

□ It is noted that it is highly probable that there are Spanish users affected, since the entity offers its services to citizens of different member states, among which are the residents in the territory Spanish

## SECOND

claim, main or sole establishment in the European Union (\*\*COUNTRY.1).

: The respondent entity had, on the date on which the claim was filed,

THIRD: Taking into account the cross-border nature of the claim, with

On June 15, 2020, the claim was sent to the control authority of

\*\*COUNTRY.1, the Information Commissioner's Office (ICO), as it is the competent authority to act as the main control authority, in accordance with the provisions of article 56.1 of the GDPR.

FOURTH: This referral was made, through the "Market Information System Internal" (IMI).

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The control authority of \*\*COUNTRY.1 agreed to act in the procedure as main control authority, and passed the case to its claims management unit for your research.

FIFTH: On July 16, 2020, ICO disclosed to the control authorities through IMI a brief summary with the most relevant facts of the gap, written in the context of the investigation.

SIXTH: On January 1, 2021, \*\*\*COUNTRY.1 has ceased to belong to the Union Union, and, consequently, its supervisory authority, ICO, no longer participates in the cooperation and coherence mechanism established in Chapter VII of the RGPD. For On the other hand, the aforementioned entity established in \*\*\*COUNTRY.1 has ceased in its capacity of main establishment of the data controller in the European Union.

SEVENTH: In response to a communication from this Agency, ICO confirms that continues to investigate the case, but after consulting with the legal team, states that it is not in a position to provide the public with any information about its Advance.

## FOUNDATIONS OF LAW

### I - Competition

In accordance with the provisions of article 60.8 of the RGPD, the Director of the Spanish Data Protection Agency is competent to adopt this resolution, in accordance with article 12.2, section i) of Royal Decree 428/1993, of March 26, which approves the Statute of the Agency for the Protection of Data (hereinafter, RD 428/1993) the first and additional transitional provisions fourth of Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter, LOPDGDD).

### II - Internal Market Information System (IMI)

The Internal Market Information System is regulated by the Regulation (EU) No. 1024/2012, of the European Parliament and of the Council, of 25 October 2012 (IMI Regulation), and its objective is to promote cooperation cross-border administrative assistance, mutual assistance between Member States and the information exchange.

### III - Determination of the territorial scope

As specified in article 66 of the LOPDGDD:

"one. Except in the cases referred to in article 64.3 of this organic law,

The Spanish Agency for Data Protection must, prior to the

performance of any other action, including the admission to processing of a

claim or the beginning of preliminary investigation actions, examine its

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competition and determine the national or cross-border character, in any of its

modalities, the procedure to be followed.

2. If the Spanish Data Protection Agency considers that it does not have the

condition of main control authority for the processing of the procedure

will send, without further ado, the claim formulated to the main control authority

that it considers competent, so that it is given the appropriate course. The

Spanish Agency for Data Protection will notify this circumstance to whom, in their

case, I would have made the claim.

The agreement by which the referral referred to in the previous paragraph is resolved

imply the provisional filing of the procedure, notwithstanding that the Agency

Spanish Data Protection is issued, if appropriate, the resolution to

the one referred to in section 8 of article 60 of Regulation (EU) 2016/679.”

IV - Main establishment, cross-border treatment and control authority

principal

Article 4.16 of the RGPD defines “main establishment”:

“a) with regard to a data controller with establishments in more

of a Member State, the place of its central administration in the Union, unless the

decisions about the purposes and means of processing are made in another establishment of the controller in the Union and the latter establishment has the power to enforce such decisions, in which case the establishment that has

Once such decisions have been made, it will be considered a main establishment;

b) with regard to a data processor with establishments in more than a Member State, the place of its central administration in the Union or, if it does not have this, the establishment of the person in charge in the Union in which the main processing activities in the context of the activities of a treatment facility processor to the extent that the processor is subject to specific obligations in accordance with this Regulation”

For its part, article 4.23 of the RGPD considers “cross-border processing”:

“a) the processing of personal data carried out in the context of the activities of establishments in more than one Member State of a controller or processor of processing in the Union, if the controller or processor is established in more of a Member State,

or b) the processing of personal data carried out in the context of the activities of a single establishment of a controller or processor in the Union, but which substantially affects or is likely to substantially affect interested in more than one Member State”

The RGPD provides, in its article 56.1, for cases of processing cross-border, provided for in its article 4.23), in relation to the competence of the main supervisory authority, which, without prejudice to the provisions of article 55, the control authority of the main establishment or of the sole establishment of the

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responsible or the person in charge of the treatment will be competent to act as lead supervisory authority for cross-border processing carried out by said person in charge or person in charge, in accordance with the procedure established in article 60.

In the case examined, as stated, the entity established in \*\*\*COUNTRY.1 EASYJET AIRLINE COMPANY LTD was the principal establishment in the Union Europe of the data controller on the date on which the request was submitted. claim, so the control authority of this country, ICO, was the competent to act as the main controlling authority.

#### V - Interested control authority

In accordance with the provisions of article 4.22) of the RGPD, it is the Authority of interested control, the control authority affected by the data processing personal because:

- a.- The controller or processor is established in the territory of the Member State of that supervisory authority;
- b.- The interested parties who reside in the Member State of that authority of control are substantially affected or are likely to be substantially affected by the treatment, or
- c.- A claim has been filed with that control authority.

In this procedure, it acts as "interested control authority" only this Agency, which is the one that has received the claim.

#### VI - Complained question and legal reasoning

In this case, it has been submitted to the Spanish Data Protection Agency a claim for an alleged violation of arts. 5.1.f, 32, 33 and 34 of the GDPR.

On the date of presentation of the claim, the entity claimed had its

Main establishment in the European Union, specifically in \*\*\*COUNTRY.1. Therefore,

the claim was transferred to ICO –the control authority of this country– for being the

competent to act as the main supervisory authority, in accordance with the provisions of

article 56.1 of the RGPD. ICO accepted the case and passed it on to its asset management unit.

claims for investigation.

On July 16, 2020, ICO released a summary of the most important events

relevant to the gap. There were some 9 million affected, of which

would have seen bank details of about 2,000 involved, while the rest only

their names and email addresses would have been affected.

Additionally, the names and of some 21 million more individuals would have been

accessed by appearing in flight reservations. The company reported to ICO, with

dated February 15, 2020, which had suffered a cyberattack, and launched

containment measures at the same time. The origin of the gap would have been

in compromised airline staff accounts. The leading authority also

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presented a breakdown of those affected by nationality, confirming the existence of

51 Spaniards affected.

However, on January 1, 2021, \*\*\*PAÍS.1 has ceased to belong to

the European Union, and, consequently, its supervisory authority, ICO, no longer participates in

the cooperation and coherence mechanism established in Chapter VII of the RGPD.

On the other hand, the aforementioned entity established in \*\*\*COUNTRY.1 has ceased its

Main establishment status of the controller in the Union

Union, so the issue is no longer cross-border.

However, taking into account that the facts denounced are being

of investigation by the control authority of \*\*\*COUNTRY.1, by the Director of

The Spanish Data Protection Agency AGREES:

FIRST: PROCEED TO FILE this claim, filed on 19

May 2020 and entry registration number 017148/2020.

SECOND: NOTIFY this resolution to the CLAIMANT

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

The resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative process as prescribed

by art. 114.1.c) of Law 39/2015, of October 1, on Procedure

Common Administrative Law of Public Administrations, and in accordance with the

established in arts. 112 and 123 of the aforementioned Law 39/2015, of October 1, 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

1103-070820



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