

☐ N/Ref.: E/01569/2020 - CO/00154/2020 – A56ID 110261

## 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 January 4, 2020 and entry registration number

## FIRST

000327/2020, a claim filed by A.A.A.

(hereinafter, the claimant) against COMPANEO (GRUPO INFOPRO DIGITAL), for

an alleged violation of art. 21 of Law 34/2002, of July 11, on services of

the information society and electronic commerce (hereinafter, LSSI) and art.

13 of the GDPR.

The grounds on which the claimant bases the claim are:

☐ The claimant has received unsolicited emails announcing

food and fuel voucher cards.

☐

☐

The links provided in them lead to web portals without a privacy policy.

privacy, without identification of the owners or the Protection Delegates

of data.

The names of companies that you have been able to reach by pulling the string (Mybtobiz,

Tradedoubler, Companeo) are not familiar to you; does not recognize any relationship with them, nor has it authorized them to process their data.

The claimant provides a copy of two business emails: one from credit card fuel vouchers, received on 01/04/2020 and another announcing a credit card food vouchers, received on 01/03/2020. Headers are also included.

SMTP /HTML of the same.

: By clicking on the central image of both emails

SECOND

advertising, new forms are displayed that collect personal data. In the

two include links that, in one way or another, lead to the company

COMPANEO or the business group to which it belongs, GRUPO INFOPRO DIGITAL.

According to its privacy policy, the person responsible for the reported treatment would be

set to \*\*\*COUNTRY.1.

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

dated June 15, 2020, the provisional file of the procedure and the

remission of the claim to the control authority of \*\*\*COUNTRY.1, the Commission

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Nationale de l'Informatique et des Libertés (CNIL), for being the competent 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).

The control authority of \*\*\*COUNTRY.1 agreed to act in the procedure as main supervisory authority and declared interested in it the authorities of control of Belgium, Hungary, Italy and Austria, as well as the German regional Berlin and Bavaria (Private Sector)

FIFTH: On December 21, 2020, the leading authority has contacted contacted this Agency and has transmitted the response of the alleged responsible of the treatment.

As they explain, said company rules out that they are the ones who are sending the emails to the claimant, as they have never stored their email address e-mail, or any other information about you. You were already informed in this regard on January 27, 2020, in response to an access request made by him 3 days earlier.

Not being responsible for the reported treatment, the CNIL does not assess possible non-compliance with the information and transparency requirements indicated by the complainant, and proposes the closure of the case.

## FOUNDATIONS OF LAW

### I – Competition

Regarding the infringement of the RGPD, in accordance with the provisions of its article 60.8, 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 Data Protection (hereinafter, RD 428/1993) and the first transitory provision of Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD).

With regard to the violation of the LSSI, the jurisdiction to resolve is granted by article 43.1 of the LSSI; and in article 47 of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of the rights

(hereinafter, LOPDGDD).

## II – LSSI Matter

The facts object of the claim reveal a possible infringement of the Article 21 of the LSSI. This article, among others, incorporates into the legal system Spanish Article 13 of Directive 2002/58/EC. Under the principle of normative specialty, the special Law prevails over the general Law; things like that, the LSSI must prevail over the RGPD, as it is a special law.

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On this issue, Recital 173 of the GDPR is pronounced, which determines that “This Regulation should apply to all matters relating to the protection of fundamental rights and freedoms in relation to the processing of personal data that are not subject to specific obligations with the same objective established in Directive 2002/58/CE of the European Parliament and of the Council including the obligations of the data controller and the rights of natural persons (...)”.

Article 95 of the RGPD must also be taken into account, which specifies that "The This Regulation will not impose additional obligations on natural persons or legal provisions regarding treatment in the framework of the provision of public services of electronic communications in public communication networks of the Union in areas in which they are subject to specific obligations with the same objective established in Directive 2002/58/EC.”

Therefore, the LSSI prevails in all the issues that it specifically regulates,

among them the one contemplated in its article 21, which establishes the rules for sending commercial communications by electronic means.

### III - 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.

### IV - 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 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."

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V - 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 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 has been stated, the person allegedly responsible for the treatment COMPANEO/GROUP INFOPRO DIGITAL had his establishment in \*\*\*PAÍS.1, so the control authority of this country, the CNIL, was the competent to act as the main supervisory authority.

#### VI - 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:

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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, they act as "control authority"

interested" the control authorities listed in the fourth fact, in addition to this Agency, which is the one that has received the claim.

## VII - Cooperation and coherence procedure

Article 60 of the RGPD, which regulates the cooperation procedure between the main supervisory authority and the other interested supervisory authorities, has in section 8, the following:

"8. Notwithstanding the provisions of section 7, when rejecting or rejecting a claim, the control authority before which it has been presented will adopt the decision, it will notify the claimant and inform the data controller of it."

## VIII - Claimed issue and legal reasoning

In this case, it has been submitted to the Spanish Data Protection Agency a claim for an alleged violation of art. 21 of the LSSI and 13 of the RGPD, related to possible cross-border data processing personal.

By clicking on the central image of the emails received by the affected and not requested by him, new forms are displayed that collect data personal. Both include links that, in one way or another, lead to the company COMPANEO or the business group to which it belongs, GRUPO INFOPRO DIGITAL.

The aforementioned claim was transferred to the CNIL –the control authority of \*\*\*COUNTRY.1–



for being the competent to act as the main control authority, in accordance with the provided in article 56.1 of the RGPD. The aforementioned authority put the case in knowledge of the aforementioned company, and obtained a response from it, which transmitted to this Agency by email.

As they explain, said company rules out that they are the ones who are sending emails to the claimant, as they have never stored their address of e-mail, nor any other data of yours. You were already informed in this regard on January 27, 2020, in response to an access request made by him 3 days earlier. Not being responsible for the reported treatment, the CNIL does not assess possible non-compliance with the information and transparency requirements indicated by the complainant, and proposes the closure of the case.

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On the other hand, the claimant mentions more names in his claim (For Business, MybToBiz, TradeDoubler). The first could not be related to no entity. The last two appear in the URLs that are linked in some components of business emails, but this is not enough to identify them as possibly responsible for sending the emails.

For all of the above, this Agency does not find reasonable indications of infringement of the data protection regulations by the investigated entity, COMPANEO or GRUPO INFOPRO DIGITAL, and has not been able to identify no other possible responsible for the sending of unsolicited advertising through email. Consequently, it considers that the filing of the

present performances.

Therefore, in accordance with what was indicated, by the Director of the Spanish Agency

Data Protection,

HE REMEMBERS:

FIRST: PROCEED TO FILE this claim, filed in

date January 4, 2020 and entry registration number 000327/2020.

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

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