

□ Procedure No.: PS/00244/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated December 28, 2020

filed a claim with the Spanish Data Protection Agency.

The claim is directed against CYNGASA, S.L. with CIF B70537774 (hereinafter, the  
reclaimed).

The reasons on which the claim is based are that the claimant, when requesting a report of  
working life has learned that although their employment relationship was  
initially arranged with the company CYNGASA on 08/04/2020, this company  
he took his social security leave without his knowledge on 08/07/2020 and was given  
registered again on 08/10/2020 in the company CALDERERIA Y SOLDURA DE  
ESTRUCTURAS METALICAS, S,L', without the consent of the  
claimant to CYNGASA for the transfer of their personal data to said company.

Together with the claim, it provides a work life report

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), with reference number E/01392/2021, transfer of

said claim to the claimed party on February 26, 2021, so that he could proceed with his  
analysis and report to this Agency within a month, of the actions carried out  
carried out to adapt to the requirements set forth in the data protection regulations.

No response has been received to this request.

THIRD: On May 11, 2021, the Director of the Spanish Agency for

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

FOURTH: On July 14, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 6 of the RGD, typified in article 83.5 of the RGD.

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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## FACTS

FIRST: The claimant, when requesting a work life report, has been aware of that the claimed company transferred your personal data to a third company without your consent.

SECOND: On July 25, 2021, the claimant is notified of the settlement agreement beginning of this procedure, turning said agreement into a resolution proposal in accordance with articles 64.2.f) and 85 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (LPACAP), to the not make the claimed allegations within the indicated period.

## FOUNDATIONS OF LAW

I

By virtue of the powers that article 58.2 of the RGD recognizes to each authority of control, 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

resolve this procedure.

## II

Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights, in its article 4.11 defines the consent of the interested party as "any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either by means of a declaration or a clear affirmative action, the treatment of personal data that concerns you".

In this sense, article 6.1 of the RGPD establishes that "in accordance with the provided in article 4.11 of Regulation (EU) 2016/679, it is understood as consent of the affected party, any manifestation of free will, specific, informed and unequivocal by which it accepts, either by means of a declaration or a clear affirmative action, the processing of personal data that concerns you".

## III

In accordance with the evidence available at the present time, considers that the facts denounced, that is, transferring the personal data of the claimant to the BOILER AND WELDING OF STRUCTURES company METALICAS, S.L. without the prior consent of the owner of said personal data constitute a violation of article 6 of the RGPD.

## IV

Article 72.1 b) of the LOPDGDD states that "according to what is established in the article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

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

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Article 58.2 of the RGPD provides the following: "Each control authority will have of all the following corrective powers indicated 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;

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period;

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

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This infraction can be sanctioned with a fine of €20,000,000 maximum 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 of greater amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established by article 83.2 of the RGPD:

As aggravating the following:

In the present case we are facing negligent action of the entity

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claimed (article 83.2 b) when the personal data of the claimant is transferred to the

company of BOILER AND WELDING OF METAL STRUCTURES,

SL without the prior consent of the owner of said data.

In addition, basic personal identifiers are affected (art.

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83.2 g), such as name and surname, your social security number, work history,

and so on.

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 CYNGASA, S.L., with CIF B70537774, for an infringement of the

article 6 of the RGPD, typified in article 83.5 of the RGPD, a fine of 5,000 euros

(five thousand euros).

SECOND: NOTIFY this resolution to CYNGASA, S.L.

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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

Article 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 article 62 of the Law

58/2003, of December 17, through its entry, indicating the NIF of the sanctioned and

the procedure number that appears at the top of this document, in

restricted account number ES00 0000 0000 0000 0000 0000, opened in the name of the

Spanish Agency for Data Protection in the banking entity CAIXABANK, S.A.

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution 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 month or immediately after, and if

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

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

In accordance with the provisions of article 50 of the LOPDGDD, 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 article 90.3 a) of the LPACAP,

The firm resolution may be provisionally suspended 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

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 records provided for in article 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.

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Director of the Spanish Data Protection Agency

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