

□ N/Ref.: E/03094/2020

1120-230420

RESOLUTION OF FILE OF ACTIONS

Of the actions followed on the occasion of the claim presented in the Spanish Agency for Data Protection, for alleged violation of the Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding to 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

FIRST: Dated February 27, 2020 and entry registration number 009704/2020, a claim was received by this Agency, related to a alleged cross-border processing of personal data carried out by the company AVA TRADE, presented by A.A.A. (hereinafter, the claimant) for a alleged violation of arts. 15, 17 and 21 of the RGPD.

The grounds on which the claimant bases the claim are:

□ Reception of unsolicited advertising calls (often approximately bi-monthly), from telephone numbers with a prefix of ***PAÍS.1. At course of the same, the claimant has requested information on the origin of your data, and the suppression of the same, or at least a channel for make the request. However, their requests have not been met, and the calls have continued to occur.

□ The claimant has addressed a request for formal access on 12/27/2019 to the postal address of the calling company in ***COUNTRY.2 (since on its page web ***URL.1 does not indicate any way to exercise the protection rights

of data or contact information of a DPO), but has not obtained

answer. Remember and certify that your phone number is included in

Robinson list since 02/07/2017.

The claim is accompanied by the recordings of 4 calls, a copy of the request

of access allegedly addressed by post to the Irish headquarters of the company (not

its delivery or shipment is credited), and certificate of ADigital accrediting the inclusion in

Spanish Robinson list of the receiving telephone number since 02/07/2017.

SECOND: The person responsible for the processing of personal data, AVA TRADE EU

LTD., has its main or sole establishment in ***COUNTRY.2.

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

On February 20, 2020, the claim was sent to the control authority of

***COUNTRY.2, the "Data Protection Commission" (DPC), as it is the competent authority to act

as the main control authority in the cooperation procedure, in accordance with the

provided in article 56.1 of the RGPD.

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FOURTH: This referral to ***COUNTRY.2 was made through the "Information System

of the Internal Market" (IMI).

The control authorities of Belgium,

Denmark, Poland, Italy, Norway, Estonia, France, Portugal, Hungary, Finland and

Sweden, as well as the German regions of Rhineland-Palatinate, Lower Saxony and

Bavaria Private Sector.

FIFTH: The main authority has contacted this Agency providing

the response of the data controller. He does not acknowledge having made the calls to the claimant or be in possession of their personal data. They point out that could be unknown third parties, who would be posing as employees of a legitimately constituted company to extract information financial or personal of the subjects you call and subsequently commit any type of fraudulent activity.

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 26 March, which approves the Statute of the Data Protection Agency (in hereinafter, RD 428/1993) and the first transitory provision of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights such (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 October 25 2012 (IMI Regulation), and its objective is to promote administrative cooperation cross-border, mutual assistance between Member States and the exchange of information training.

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 nica, the Spanish Agency for Data Protection must, prior to the realisation, lization of any other action, including the admission to processing of a claim

or the beginning of preliminary investigation actions, examine their competence and determine the national or cross-border character, in any of its modalities, of the procedure to follow.

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 referred to will, without further formality, the claim made to the main control authority that it considers competent, so that it is given the appropriate course. The Agency

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The Spanish Data Protection Agency will notify this circumstance to whom, if applicable, would have made the claim.

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

will imply the provisional filing of the procedure, notwithstanding that due to the

Spanish Agency for Data Protection is issued, if appropriate, the re-

solution referred to in paragraph 8 of article 60 of the Regulation (EU)

2016/679.”

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

principal

Article 4.16 of the RGPD defines “main establishment”:

“a) in what refers to a data controller with establishments

in more than one Member State, the place of its central administration in the Union, except

that decisions about the purposes and means of processing be made in another state

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 adopted such decisions shall be deemed principal establishment;

b) with regard to a data processor with establishments in more than one Member State, the place of its central administration in the Union or, if derived from this, the establishment of the person in charge in the Union in which the main treatment activities in the context of the activities of an establishment foundation of the processor to the extent that the processor is subject to obligations specific 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 establishments in more than one Member State of a manager or a manager of processing in the Union, if the controller or processor is established in more than one Member State,

or b) the processing of personal data carried out in the context of the activities from 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 in charge in accordance with the procedure established in article 60.

In the case examined, as stated, AVA TRADE has in ***COUNTRY.2

its main or sole establishment, so that the control authority of this country, the Data Protection Commission, (DPC), is the competent to act as authority of main control in the cooperation procedure.

V - Interested control authority

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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 processing of personal data sonal 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 control authority control are substantially affected or are likely to be substantially affected.

mind affected by the treatment, or

c.- A claim has been filed with that control authority.

In this proceeding, they act as “international control authority”.

sated” the control authorities of Belgium, Denmark, Poland, Italy, Norway, Es-

Estonia, France, Portugal, Hungary, Finland and Sweden, as well as the German regional nas of Rhineland-Palatinate, Lower Saxony and Bavaria Private Sector.

VI - 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 supervisory authority to which it has been filed will adopt the decision, it will notify the claimant and inform the data controller of it.”

VII - Claimed issue and legal reasoning

In this case, it has been presented to the Spanish Data Protection Agency. cough claim for an alleged violation of art. 17 and 21 of the RGD, related with a possible cross-border processing of personal data carried out do by the company AVA TRADE.

The person in charge of said platform is a company that has a Main or sole establishment in ***COUNTRY.2. Consequently, this Agency sent the case to the Data Protection Commission (DPC), as the main authority in the cooperation procedure, following the provisions of art. 60 of the GDPR.

The main authority has contacted this Agency facilitating the response of the data controller. She does not acknowledge having made the calls to the claimant or be in possession of their personal data. They point out that could be unknown third parties, who would be posing as employees of a legitimately constituted company to extract information financial or personal of the subjects you call and subsequently commit any type of fraudulent activity.

As there is no evidence in the documentation provided by the claimant rational that the calls have actually been made by the company claimed, nor, on the other hand, be accredited the delivery or shipment of the alleged request for access to the postal address of the company in ***COUNTRY.2, this Agency considers that the filing of the actions initiated as a result of this claim.

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

Spanish Data Protection, IT IS AGREED:

FIRST: PROCEED TO FILE the claim filed on the 27th of

February 2020 and entry registration number 009704/2020.

SECOND: NOTIFY this resolution to the CLAIMANT

THIRD: INFORM AVA TRADE EU LTD. about the decision made in the
this resolution.

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

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 procedure according to the provisions
do by art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common Agreement of Public Administrations, and in accordance with the provisions

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

may file, optionally, an appeal for reconsideration before the Director of the

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

following the notification of this resolution or directly admissible contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with

in accordance with the provisions of article 25 and section 5 of the additional provision

fourth of Law 29/1998, of July 13, regulating the Contentious-Administrative Jurisdiction

ministerial, within a period of two months from the day following the notification

of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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