

□ File No.: PS/00178/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On October 23, 2020, D. A.A.A. (hereinafter, the claimant)
filed a claim with the Spanish Agency for Data Protection, against
CEYLLE SOLUTIONS & DEVELOPMENT S.L. with NIF B39764691 (hereinafter, the
reclaimed).

The claimant states that his ex-wife, administrator of the company CEYLLE
SOLUTIONS & DEVELOPMENT S.L. of which both are partners, sent several
emails to companies with which the entity had a business relationship, attaching
documentation about legal proceedings between her and the claimant,
revealing information and data of this, such as the Writ of admission of the complaint
against the claimant for misappropriation of Ceylle's assets and the complaint by the
misappropriation of a vehicle. Attached is evidence of the emails sent and
of the submitted documentation.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, Protection of Personal Data and Guarantee of Digital Rights
(hereinafter LOPDGDD), said claim was transferred to the respondent, so that
proceed to its analysis and inform this Agency within a month of the
actions carried out to adapt to the requirements set forth in the regulations of
Data Protection.

On February 10, 2021, a response was received from the respondent in which he stated
manifest that he sent the emails to companies with which the entity had a relationship

commercial, to prevent them from continuing to serve as suppliers, due to the financial insolvency.

THIRD: On April 15, 2021, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Data Protection Agency agreed admit for processing the claim filed by the claimant against the respondent.

FOURTH: On May 31, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 32 of the RGPD and article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD.

FIFTH: The initiation agreement was notified to the respondent by electronic means in date August 8, 2021, after ten calendar days have elapsed since it was placed available for access, according to paragraph 2, article 43, of Law 39/2015, of 1 of October, of the Common Administrative Procedure of the Public Administrations.

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SIXTH: Having notified the aforementioned initial agreement and not having presented arguments, of the documentation that works in the file, and in accordance with the provisions of Article 89.3 of Law 39/2015, of October 1, on Administrative Procedure Common of the Public Administrations, on October 11, 2021, it was formulated proposed resolution, with a fine of two thousand euros (€2,000), for infraction of the article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD, considered very serious for prescription purposes in article 72.1.i) of the LOPDGDD.

SEVENTH: The entity complained against has not submitted arguments to the Proposal for

Resolution.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

FIRST: On October 23, 2020, the claimant filed a claim with

the Spanish Agency for Data Protection,

exposing that his ex-wife,

administrator of the company of which both were partners, sent various emails to

companies with which the entity had a commercial relationship, attaching documentation

that revealed information and personal data of this.

SECOND: On February 10, 2021, a response is received from the respondent in the

which shows that he sent the emails to companies with which the entity had

commercial relationship, to prevent them from continuing to serve as suppliers, due to the

economic insolvency suffered by society.

FOUNDATIONS OF LAW

FIRST: By virtue of the powers that article 58.2 Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD) recognizes each

control authority, and according to the provisions of articles 47 and 48 of the Organic Law

3/2018, of December 5, on the Protection of Personal Data and Guarantee of the

Digital Rights (hereinafter, LOPDGDD), the Director of the Spanish Agency

of Data Protection is competent to resolve this procedure.

SECOND: Article 5 of the RGPD, whose heading is entitled "Principles related to the

treatment" establishes in letter f) of its section 1 that the personal data will be

"processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against

its loss, destruction or accidental damage, through the application of technical measures

or appropriate organizational structures ("integrity and confidentiality")."

In relation to this principle, Recital 39 of the aforementioned GDPR states that:

"[...]Personal data must be processed in a way that guarantees security and appropriate confidentiality of personal data, including to prevent access or unauthorized use of said data and of the equipment used in the treatment".

For its part, the LOPDGDD, in its article 5 provides that:

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"1. Those responsible and in charge of data processing, as well as all people who intervene in any phase of this will be subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section will be complementary to the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will be maintained even when the relationship of the obligor with the person in charge or in charge of the treatment".

THIRD: The claim is based on the presumed illegality of the commissioning knowledge to third parties, by the claimed party, of the claimant's data, through emails sent to other companies, disclosing information and documentation relating to legal proceedings between the claimant and the respondent.

The documentation in the file offers clear indications that the claim mado, violated article 5 of the RGPD, principles related to treatment, in relation to with article 5 of the LOPGDD, duty of confidentiality, disclosing information and

personal data to third parties. The dissemination of this data by whoever was a partner and administrator of the company (with respect to which their legislation is not questioned). estimation to dispose of them and treat them in the exercise of the rights that may correspond) to third parties, supposes a violation of the principle of confidentiality ciality established by the RGPD in the processing of personal data, general obligation general that highlights article 5 of the LOPDGDD, without being understood as reduced to duty of professional secrecy.

This duty of confidentiality must be understood to have the purpose of preventing leaks of the data are carried out without the consent of the owners of these.

Therefore, this duty of confidentiality is an obligation that falls not only on the responsible and in charge of the treatment, but to everyone who intervenes in any phase of the treatment and complementary to the duty of professional secrecy.

FOURTH: Article 83.5 of the RGPD, which provides the following:

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 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 largest amount:

a)

the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9; [...]”

For the purposes of the limitation period for infractions, the infraction indicated in the previous paragraph is considered very serious and prescribes after three years, in accordance with Article 72.1 of the LOPDGDD, which establishes that:

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“Based on the provisions of article 83.5 of Regulation (EU) 2016/679, 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:

Yo)

The violation of the duty of confidentiality established in article 5 of this organic law.

FIFTH: In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the RGD, precepts that indicate:

"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 the 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 nature, scope or purpose of the processing operation in question, as well as the number number of interested parties affected and the level of damages they have suffered;
- b) intentionality or negligence in the infringement;
- c) any measure taken by the controller or processor to pa-allocate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, gives an account of the technical or organizational measures that have been applied by virtue of the articles 25 and 32;

e) any previous infringement 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 remedy the infringement and mitigate the possible adverse effects of the infringement;

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 whether the person in charge or the person in charge notified the infringement and, if so, to what extent. gives; i) when the measures indicated in article 58, section 2, have been ordered given previously 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 to certification mechanisms approvals approved in accordance with article 42,

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly. mind, through infraction.”

For its part, article 76 “Sanctions and corrective measures” of the LOPDGDD has:

“1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation

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(EU) 2016/679 will be applied taking into account the graduation criteria

established in section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of 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 penalty for infringement of article 5.1 f), the fine should be graduated taking into account:

- The scope in a local environment of the treatment carried out by the entity claimed.
- The number of affected is limited to a single person, the claimant.
- The claimed entity is a small business.

Considering the exposed factors, the valuation that reaches the amount of the fine is €2,000 for violation of article 5.1 f) of the RGPD.

SIXTH: Establishes Law 40/2015, of October 1, on the Legal Regime of the Sector

Public, in Chapter III on the "Principles of the power to sanction", in the

Article 28 under the heading "Responsibility", the following:

"1. They may only be sanctioned for acts constituting an administrative infraction.

natural and legal persons, as well as, when a Law recognizes their capacity to

to act, the affected groups, the unions and entities without legal personality and the

independent or autonomous estates, which are responsible for them

title of fraud or guilt."

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of the sanctions whose existence has been proven, the Director of the

Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE CEYLLE SOLUTIONS & DEVELOPMENT S.L., with NIF

B39764691, for an infringement of article 5.1. f) of the RGPD, typified in the article

83.5 of the RGPD, a fine of TWO THOUSAND EUROS (€2,000).

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SECOND: NOTIFY this resolution to CEYLLE SOLUTIONS &

DEVELOPMENT S.L.

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 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 art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution 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 registers provided for in art. 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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