 File No.: EXP202102536

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Xfera Móviles, S.A. (hereinafter, the claimant party or Xfera) dated 1 September 2021 filed a claim with the Spanish Protection Agency of data. The claim is directed against the State Federation of Services, Mobility y Consumption of the UGT (FESMC-UGT) with NIF G87589909 (hereinafter, the claimed or UGT). The grounds on which the claim is based are as follows:

The complaining party states in its claim that the complaining party has submitted to your workers, emails to their email addresses corporate, without having the status of union representatives in the company, or having been constituted, at the time of sending the emails, as a trade union section in the company, and without the claimant having provided said union with the emails electronic devices used, so they understand that they have obtained them in a illegitimate

On the other hand, it states: “that in order to avoid indiscriminate transfers of personal data affecting its workforce, the company channeled shipments through a list of distribution (comunicación.interna@masmovil.com) thus achieving a balance between the guarantee of the fundamental rights to freedom of association and the protection of personal information.

However, the respondent party, far from requesting access to said list of distribution or simply requesting the information from the company, chose to obtain irregularly the email addresses of the entire staff, and tried to

send from their own servers.

In total, UGT made 21 shipments between 13:00:59 and 13:04:45 on August 4,

2021, addressed to 960 recipients, all of them with addresses in the format

“name.surname@masmovil.com”, which is the one used by the company for the accounts

email address of your employees.

The messages were sent from the mailbox info@ugt-comunicaciones-

madrid.es

A copy of the generated logs is provided as a document.

Given these facts, Xfera adopted the following measures:

1. Sent a communication to all employees (provided as document no.

4), in which it is briefly reported what happened in which it is clarified that it has not

provided none of the email addresses.

2.Notified the facts to the Spanish Data Protection Agency (document no.

5).

3. He sent an email (provided as document no. 6) and a burofax

(document 7) to the UGT union, proof of receipt (document no. 8).

The union's response was to send a large number of emails

massive emails to the entire staff of Xfera and Lorca Telecom”.

It provides, among other things, the documentation with the emails sent on the 4th and 5th of

August 2021.

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), said claim was transferred to the claimed party, to

to proceed with 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.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of

October 1, of the Common Administrative Procedure of the Administrations

Public (hereinafter, LPACAP), was collected on October 18, 2021 as

It is stated in the acknowledgment of receipt that is in the file.

No response has been received to this transfer letter.

THIRD: On December 23, 2021, in accordance with article 65 of

the LOPDGDD, the claim presented by the claimant was admitted for processing.

FOURTH: On January 20, 2022, 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 6.1 of the RGPD, typified in Article 83.5 of the

GDPR.

FIFTH: After the period granted for the formulation of allegations to the

agreement to initiate the procedure, it has been verified that no allegation has been received

any by the claimed party.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP) -provision of which

the party claimed was informed in the agreement to open the proceeding-

establishes that if allegations are not made within the stipulated period on the content of the

initiation agreement, when it contains a precise statement about the

imputed responsibility, may be considered a resolution proposal. In the

present case, the agreement to initiate the disciplinary proceedings determined the

facts in which the imputation was specified, the infraction of the RGPD attributed to the

claimed and the sanction that could be imposed. Therefore, taking into account that

the party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of

beginning is considered in the present case resolution proposal.

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

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: It is verified that the respondent party has sent the workers of

Xfera, emails to their corporate email addresses, without

have the status of trade union representative in the company, or have

constituted, at the time of the sending of the mails, as a union section in the

company, and without the claimant having provided said union with the emails

used electronics.

SECOND: It is recorded that the respondent made 21 shipments between 13:00:59 and

13:04:45 on August 4, 2021, addressed to 960 recipients, all of them with

addresses with the format “name.surname@masmovil.com”, which is the one used by the

company for your employees' email accounts.

The messages were sent from the mailbox info@ugt-comunicaciones-

madrid.es

THIRD: On January 20, 2022, this sanctioning procedure was initiated by the

violation of article 6 of the RGPD, being notified on January 21, 2022. No

having made allegations, the claimed party, to the initial agreement.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each

control authority, and as established in arts. 47 and 48.1 of the LOPDPGDD, the

Director of the Spanish Data Protection Agency is competent to resolve

this procedure.

Article 6 of the RGPD, "Legality of the treatment", details in its section 1 the

assumptions in which the processing of third party data is considered lawful:

II

"1. The treatment will only be lawful if it meets at least one of the following

conditions:

a) the interested party gave their consent for the processing of their data

personal for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the

interested party is a party or for the application at the request of the latter of measures

pre-contractual;

(…)"

The infraction for which the claimed party is held responsible is

typified in article 83 of the RGPD that, under the heading "General conditions for

the imposition of administrative fines", states:

"5. Violations of the following provisions will be sanctioned, in accordance

with section 2, with administrative fines of a maximum of 20,000,000 Eur 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."

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the

Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements

considered very serious" provides:

"1. Based on the provisions of article 83.5 of the Regulation (U.E.)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in it and, in

particularly the following:

(…)

b) The processing of personal data without the concurrence of any of the

conditions of legality of the treatment established in article 6 of the

Regulation (EU) 2016/679."

III

The documentation in the file offers evidence that the party

claimed, violated article 6.1 of the RGPD, since it is considered proven that

the respondent used the database of email addresses of the workers

to send mass emails to said employees, without having

any legitimacy to carry out such treatment of personal data.

Consequently, it has carried out a processing of personal data without

has accredited that it has the legal authorization to do so.

However, and this is essential, the defendant does not prove the legitimacy to

the treatment of the data of the workers of the complaining party.

It should be noted that required information on these facts to the party

claimed, although it is stated that the notification was delivered on October 18, 2021,

has not replied to this Agency. Not having, either, made allegations, to the

agreement to initiate this sanctioning procedure.

Respect for the principle of legality that is in the essence of the fundamental right

of protection of personal data requires that it be accredited that the

responsible for the treatment displayed the essential diligence to prove that

extreme. Failure to act in this way -and this Agency, who is responsible for ensuring

for compliance with the regulations governing the right to data protection of

personal character - the result would be to empty the content of the principle of legality.

Thus, it is estimated that the facts that are submitted to the assessment of this

Agency could constitute an infringement of article 6.1 of the RGPD.

IV

The determination of the sanction to be imposed in this case requires

observe the provisions of articles 83.1 and 2 of the RGPD, precepts that,

respectively, provide the following:

"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, 9 and 6 are in each individual case

effective, proportionate and dissuasive."

"two. 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, scope or purpose of the processing operation in question, as well

such as the number of interested parties affected and the level of damages that

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, in what

measure;

i) when the measures indicated in article 58, section 2, have been ordered

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 mechanisms of

certification approved in accordance with article 42, and

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, through the infringement."

Within this section, the LOPDGDD contemplates in its article 76, entitled

"Sanctions and corrective measures":

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

(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 treatment of

personal information.

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 subsequent to the commission of the

infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection officer.

h) Submission by the person in charge or person in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which

there are disputes between them and any interested party.

3. It will be possible, complementary or alternatively, the adoption, when appropriate,

of the remaining corrective measures referred to in article 83.2 of the

Regulation (EU) 2016/679."

It is appropriate to graduate the sanction to be imposed on the claimed party and set it at the amount of

€2,000 for the infringement of article 83.5 a) RGPD.

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 the State Federation of Services, Mobility and Consumption of the

UGT (FESMC-UGT) with NIF G87589909, for a violation of Article 6.1) of the

RGPD, typified in Article 83.5 a) of the RGPD, a fine of 2,000 euros (two thousand

euros).

SECOND: NOTIFY this resolution to the State Federation of Services,

Mobility and Consumption of the UGT (FESMC-UGT) with NIF G87589909.

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
is between the 1st and 15th of each month, both inclusive, the term to carry out the
voluntary payment will be until the 20th day of the following month or immediately after, and if
is between the 16th and last day of each month, both inclusive, the term of the
payment will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDGDD, the
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 period of
month 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, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[https://sedeagpd.gob.es/sede-electronica-web/], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

Electronic Registration of

through the

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day following the notification of this resolution, it would end the

precautionary suspension.

Sea Spain Marti

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