

Procedure No.: PS/00367/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on May 10, 2019 filed

claim before the Spanish Data Protection Agency. The claim is directed against VOX ESPAÑA with NIF G86867108 (hereinafter, the claimed).

The reasons on which the claim is based are that an email has been sent without a blind copy members of that political party.

SECOND: In accordance with the mechanism prior to the admission for processing of the

claims that are formulated before the Spanish Agency for Data Protection, foreseen

in article 65.4 of Organic Law 3/2018, of December 5, on Data Protection

Personal and guarantee of digital rights, which consists of transferring the

same to the Data Protection Delegates designated by those responsible or

in charge of the treatment, or to these when they have not been designated, and with the purpose

indicated in the aforementioned article, on May 24, 2019, transfer of this

claim to the claimed entity, requesting that within a month contribute to this

Agency information on the causes that have motivated the incidence that has originated the

claim and the measures taken to prevent similar incidents from occurring.

The respondent answered the request for information on October 10, 2019, stating

the next:

“The reason for sending certain internal information from VOX ESPAÑA to a small number

of affiliates in the town of Segovia, through communication via email without

blind copy of their addresses, it was due to an error on the part of the training staff

politician in charge of this task.

Logically, it was not the intention of VOX ESPAÑA to address the content of the statement with open copy to the aforementioned email addresses, to which we must add the fact that its content was devoid of any other type of information or personal circumstance included that could affect any of the receptors

On the part of VOX ESPAÑA and at the time the error became known, proceeded to review the protocol and technological systems for sending communications electronic, verifying that it was correct and appropriate for these purposes - shipments do not commercials aimed at militants/affiliates-, although the personnel in charge did not review before of your shipment the correct placement of the addresses in the corresponding box; for the that the responsible person was informed and the training already received was reiterated, on certain aspects concerning the processing of personal data and expressly influencing the protection of those who deserve greater rigor due to their sensitive character, such as those concerning ideology.”

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THIRD: On November 28, 2019, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of Article 5.1.f) of the RGPD, typified in Article 83.5 of the GDPR.

FOURTH: Once the agreement to initiate this sanctioning procedure has been notified, the The respondent filed a pleadings brief in which, in summary, it stated that the Delegate for data protection of the claimed party, by email dated 8

October 2019, informed the claimant that the facts denounced had been due to an error, reiterating that "once the error was detected, we proceeded to adopt the security measures adjusted to the effect, to review the protocol of sending communications, as well as training and awareness of staff in charge of such tasks to avoid that in the future actions could be repeated. Similar; We must indicate that these are isolated cases to date, so the one that concerns us now was an isolated event and without any intentionality, without, on the other hand, any of the holders of the remaining addresses that appear in the shipment in question has expressed a complaint, claim or even interest in regarding such circumstance that occurred."

FIFTH: On December 28, 2019, a resolution proposal was formulated, proposing the imposition of a penalty of 2,500 euros (two thousand five hundred euros) for the commission of an infringement of article 5.1.f) of the RGPD in relation to article 5 of the LOPDGDD, typified in article 83.5.a) of the RGPD.

SIXTH: Once the proposed resolution of this sanctioning procedure has been notified, The respondent filed a pleadings brief stating the following:

"This party considers that the Proposed Resolution violates the PRINCIPLE OF PROPORTIONALITY that governs the application of Administrative Law sanctioning

Based on the facts and what was alleged in previous briefs, we consider that applying the principles of proportionality the sanction should not go beyond the warning indicated in article 58.2 b) of the RGPD that speaks of: "sanctioning all responsible or person in charge of treatment with a warning when the treatment operations have violated the provisions of this Regulation.

The application of administrative sanctions must be carried out based on the intention of the offender and his degree of guilt, to the persistence or repetition over time of the

infraction, to the damage caused by the infringing conduct and to the recidivism in the harmful attitudes.

As evidenced in the submitted documentation, the communication without a copy hidden is due to human error, the VOX Political Party put technical measures to avoid new errors in communications, communicated with those affected explaining the situation and the measures, the affected and complainant accept the apologies and measures adopted by the organization despite showing its disagreement with the local organization.

The principle of proportionality of administrative sanctions is found regulated in Art. 29, Law 40/2015, of October 1 and can be defined, according to the www.aepd.es

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Dictionary of legal Spanish of the RAE and the CGPJ as the "guarantee of legal administrative penalty that must be understood as enshrined in article 25.1 of the Spanish Constitution and requires that in the normative determination of the regime sanctioning as well as in the imposition of the sanction by the Administration is kept the due adequacy or correspondence between the seriousness of the offense committed and the intensity of the sanction applied".

The foregoing must be connected with the provisions of article 28 of the Law 40/2015, of October 1, on the Legal Regime of the Public Sector, which establishes as one of the principles of the sanctioning power that of "Responsibility", determining in this regard in its section 1 that: "They can only be sanctioned by Acts constituting an administrative offense natural and legal persons, as well as

such as, when a Law recognizes their capacity to act, the affected groups, the unions and entities without legal personality and independent estates or self-employed, who are responsible for them by way of fraud or negligence”.

Likewise, the provisions of article 53.2 of Law 39/2015 must be taken into account, of October 1, of the Common Administrative Procedure of the Administrations Public, establishes that: "In addition to the rights provided for in the previous section, in the case of administrative procedures of a punitive nature, the presumed responsible, will have the following rights: (...) b) To the presumption of not existence of administrative responsibility until the contrary is proven.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

FACTS

FIRST: the respondent has sent an email without a blind copy to the affiliates of said political party.

SECOND: The respondent acknowledges the facts indicating that it was an error, and that once detected, the security measures adjusted to the effect, review of the protocol for sending communications, as well as the training and awareness of the personnel in charge of such tasks to prevent similar actions could be repeated in the future.

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 LOPDGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

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For its part, article 5 of the RGPD establishes that personal data will be:

“a) processed in a lawful, loyal and transparent manner in relation to the interested party

("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed

subsequently in a manner incompatible with those purposes; according to article 89,

section 1, further processing of personal data for archiving purposes in the interest

public, scientific and historical research purposes or statistical purposes shall not be considered

incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for

those that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken

reasonable for the erasure or rectification without delay of the personal data that is

inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties during

no longer than is necessary for the purposes of processing the personal data; the

personal data may be kept for longer periods as long as they are processed

exclusively for archival purposes in the public interest, scientific research purposes or

historical or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to

the application of the appropriate technical and organizational measures imposed by this

Regulation in order to protect the rights and freedoms of the interested party ("limitation of the term of conservation");

f) processed in such a way as to ensure adequate security of the data including protection against unauthorized or unlawful processing and against their accidental loss, destruction or damage, through the application of technical measures or appropriate organizational measures ("integrity and confidentiality").

The controller will be responsible for compliance with the provisions in section 1 and able to demonstrate it ("proactive responsibility")."

III

In accordance with the evidence obtained, it is considered that the facts reported, i.e. sending a promotional email without a blind copy, sent to a multitude of recipients, supposes the violation of article 5.1 f) of the RGPD, which governs the principles of integrity and confidentiality of personal data, as well such as the proactive responsibility of the data controller to demonstrate its compliance.

In response to the arguments presented before the motion for a resolution of this sanctioning procedure, where it is requested that he be sanctioned with a warning, in accordance with article 58.2 b) of the RGPD, by virtue of the principle of proportionality, since the facts claimed are as a consequence of a human error, it should be noted that on May 24, 2019, this document was transferred claim to the respondent, requesting that within a month contribute to this Agency information on the causes that have motivated the incidence that has originated the claim and the measures taken to prevent similar incidents from occurring.

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Although the respondent did not contact this Agency until October 10, 2019, In said brief, he stated that he had proceeded to adopt the security measures adjusted for this purpose, reviewing the protocol for sending communications, as well as the training and awareness of the personnel in charge of such tasks to prevent similar actions could be repeated in the future.

IV

Article 72.1.a) 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 the three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679

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Article 58.2 of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with a warning 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 accordance with 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 volume of total annual global business of the previous financial year, opting for the one with the highest 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 dealing with unintentional, but significant, negligent action.

goes (article 83.2 b)

☐ Basic personal identifiers are affected, according to art. 83.2g)

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Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the sanctions whose existence has been proven, having been adopted security measures adjusted to the effect, revised the shipping protocol of communications, and proceed to the training and awareness of the personnel email dispatcher,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE VOX ESPAÑA, with NIF G86867108, for a infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD, a warning sanction.

SECOND: REQUEST VOX ESPAÑA with NIF G86867108, so that in the

within one month from this act of notification proves before this body the adoption of the appropriate technical or organizational measures to guarantee the security adequate with respect to the personal data it processes, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, in accordance with article 5.1 f) of the RGPD

THIRD: NOTIFY this resolution to VOX ESPAÑA with NIF G86867108.

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

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

precautionary suspension.

Electronic Registration of

through the

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Sea Spain Marti

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