

□ File No.: EXP202103951

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 complaining party) dated October 5, 2021
filed a claim with the Spanish Data Protection Agency. The
claim is directed against UNION SINDICAL OBRERA with NIF G28567402 (in
hereinafter, the respondent, the Union or USO). The reasons on which the
claim are as follows:

The claimant states that at the time he filed a claim with this Agency against
the entity claimed for the lack of attention to its right to delete data, which
which gave rise to file TD/02466/2017, which concluded with an approving resolution of
the claims of the respondent notified to the union claimed on April 13
of 2018, although it has verified that the claimed Union has not attended the
result of the resolution to TD/02466/2017 and has sent various emails
emails, to your professional email address, being sent in
dates May 17, 2018, July 21, 2020, October 15, 2020 and 22 and 29 of
September 2021. He indicates that on July 23, 2020 he addressed, through
email you provide, to the sending Union reminding them of the obligation to
compliance with the resolution to TD/02466/2017, receiving a response on 30
July 2020, apologizing for the error, attributing it to the use of a database
old, and noting that they would correct the situation, although, at dates after said
communication, on dates October 15, 2020 and September 29, 2021 has
received new emails from the Union claimed.

The complaining party provides a copy of the aforementioned emails, all of them sent or addressed to "USO Social Security". In the text of these communications it is made mention to the organizations USO and Federation of Attention to the Citizenship of USO-AGE Sector, hereinafter FAC-USO).

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 USO entity, 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.

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 11/05/2021 as recorded in the

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acknowledgment of receipt that works in the file.

On 12/02/2021, this Agency received a written response from FAC-USO indicating that the complaining party had already claimed its right of suppression to the Trade Union Section in 2018. You are aware that you cannot send communications to the claimant.

(...) sends through an internal mail, similar to an intranet, to all the groups trade unions, federations and provincial directorates, lists of all users who there, updated. Received this list, the Trade Union Section remakes the entire list, it is

that is, it copies all the data, of the entire generic list, independently, in another place, to be able to separate the contacts by lists individualized and to be able to do manual searches of the contacts that have requested that informative communications not be sent to them. It is a very laborious, costly and excessive, which the Trade Union Section carries out in order to comply with the rights of suppression of the interested party, but that escapes on many occasions to the control of the USO Trade Union Section itself.

USO shows its willingness to review the protocols and assess alternative channels for sending informative communications electronically.

THIRD: On January 5, 2022, in accordance with article 65 of the LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: On 05/05/2022, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the USO entity, in accordance with the provided in articles 63 and 64 of the LPACAP, for the alleged violation of article 6 of Regulation (EU) 2016/679 (General Data Protection Regulation, in hereinafter RGPD), typified in article 83.5.a) of the aforementioned Regulation; and qualified as very serious for prescription purposes in article 72.1.b) of the LOPDGDD.

In the opening agreement it was determined that the sanction that could correspond, attended the existing evidence at the time of opening and without prejudice to what resulting from the instruction, would amount to a total of 3,000 euros.

Likewise, it was warned that the imputed infractions, if confirmed, may entail the imposition of measures, according to the aforementioned article 58.2 d) of the RGPD.

FIFTH: Having been notified of the aforementioned initiation agreement, the entity claimed submitted a written dated 05/20/2022, in which it states that the entity FAC-USO acts in a independent on the facts giving rise to the claim. On this basis, it requests that the USO entity is exonerated from responsibility and the claim is transferred to

the responsible entity FAC-USO. He bases his request on the following considerations:

. The claim is produced by the sending of informative emails to the claimant, (...), by FAC-USO, which is a trade union federation independent with its own CIF, which manages, works, collects and treats data of independently of USO.

. The claimant formally requested the deletion of his personal data and

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I file a claim for lack of attention to this right, which gave rise to the file

TD/02466/2017, in which a resolution was issued that was notified to a person in charge of the wrong data processing, USE.

. The emails that gave rise to the claim were sent from FAC-

USO, by a trade union section that is part of said Federation, to which

It is up to you, as the data controller, to give the necessary arguments regarding this claim.

This can be seen in the legal notice inserted in one of the emails, which indicates:

“Copyright © 2016 FAC-USE. All rights reserved. Federation Attention to the

Citizenship of the Unión Sindical Obrera... Complying with Spanish legislation on data protection and our strict privacy policy, your email address is

included in a personal data file owned by the Federation Attention to the

Citizenship of the USO (Unión Sindical Obrera), created for the distribution of information

related to union activity. If you do not want to receive more information, you can unsubscribe

sending an email to: ***EMAIL.1 or in writing at any of our

provincial delegations.

. FAC-USO, collects data with its own responsibility, generates its own databases

data and sends its own communications.

. USO understands that the complaining party directs its claim against USO, understanding

wrongly that this entity encompasses everything that has to do with all

union sections, but each one is responsible for the actions carried out

independently.

. In the emails provided by the complaining party, the general logo of the USO and the

of FAC-USO, a fact that could also have generated the confusion.

. The case that occurred could be transferred to similar cases in which companies

holding company or parent companies have as their corporate name, the commercially known names

for the client or associates and their affiliated companies use the name for purposes

promotional, but are legally represented independently.

SIXTH: On 05/25/2022, the instructor of the procedure agreed to open

a period of practice of evidence, considering reproduced for evidentiary purposes the

claim filed and its documentation, as well as the documents obtained and

generated during the claim admission phase; and by presented

the allegations made by USO and the documentation that accompanies them.

Likewise, it was agreed to include the following documentation in the proceedings:

1. Confederal Statutes of the Workers Union Union (USO), obtained from the

website "uso.es".

“Chapter IV. Structure of the Workers' Trade Union

Article 14. State Professional Federations and Territorial Unions

1. For the development of its objectives, the Unión Sindical Obrera is structured in Federations

Professionals and Territorial Unions...

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Article 15. State Professional Federations

1. They group their affiliation, throughout the territory, from the union sections. I know organized in Regional, National or Autonomous City Federations.
2. They may establish sectoral structures internally, providing each sector, in the framework of the statutes of their respective Federation, of autonomy to organize themselves, define the trade union action and manage collective bargaining in its field.

Article 16. Federal Structure

The people affiliated to the USO are framed in the following Professional Federations:

1. Federation of Industry (FI-USO).
2. Federation of Services (FS-USO).
3. Federation of Attention to Citizenship (FAC-USO).
4. Education Federation (FE-USO).
5. Federation of Private Security Workers (FTSP-USO)".

"Article 24. Statutes of the Territorial Unions and Professional Federations

1. Professional Federations and Territorial Unions will be provided with Statutes and Own regulations that must be registered. In accordance with the provisions of the Organic Law 11/1985, of August 2, on Trade Union Freedom, will have their own legal personality. will define the corresponding objectives, structure and operation, according to its characteristics and specificities...".
2. Statutes of the entity Federation Attention to Citizenship (FAC USO), obtained of the website "***URL.1".

"Chapter I. Name, domicile and scope.

Article 1. With the denomination of the Federation of Attention to the Citizenship of the Union

Sindical Obrera, in acronym FAC-USO, is constituted a trade union organization that declares itself autonomous within the scope of Spanish territory, integrated into the Trade Union Confederation of the Unión Sindical Obrera, subscribing to its fundamental objectives and assuming the rights and duties arising from these Statutes...

The FAC-USO is constituted under current legislation and its headquarters are located in...".

"Article 3. Its territorial scope will be that of Spain, its functional scope being the following:

3.1.- General State Administration:

- State Civil Administration.
- Military Administration (civilian personnel).
- Administration of the Managing Entities and Common Services of the Social Security. - Justice administration.
- Educational Administration (non-teaching staff).
- Post and Telegraph.
- State Tax Administration Agency.
- Public Service Entities, or Public Law Corporations...".

"Chapter III. Constitution

Article 6. The FAC-USO brings together the members who provide their services in the different sectors indicated in art. 3 of these Statutes through a relationship of employment of an administrative, labor or statutory nature. It also covers workers from sectors of the private sphere whose public service function and relationship with any of the public sectors advise it".

3. Privacy Policy of the entity Federation Attention to Citizenship (FAC USO), obtained from the "URL.1" website.

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“...it is reported that the personal data that is collected directly from the user through through the different resources available in the portals dependent on the FAC-USO (**URL.1 (**URL.1) and formation.***URL.1 (formation.***URL.1), will be treated as confidential and will be incorporated into the respective files for which the company is responsible.

FAC-USO, with the purposes detailed in the Regulations of the Spanish Agency for Data Protection... and European Data Protection Regulation... not being used for purposes incompatible with these...

Those affected can exercise their rights of access, rectification, cancellation and opposition before the FAC-USO, by email addressed to...”.

4. Claim filed with the AEPD by the claimant, dated 10/19/2017, that gave rise to the procedure of Protection of Rights indicated with the number TD/02466/2017.

The complaining party, after indicating (...), states that he received in his account corporate email a communication “from the USO Union” and that it requested “a said Union” the cancellation of the mailing list and/or the corresponding base although, despite this, he continued to receive emails.

He provided a copy of the emails cited in his claim, all of them sent from the “Social Security USO” address, the same address to which the claimant addressed his request to exercise rights. Emails received by the complaining party include union information from the entity Federation of Public Employees of USE.

5. Resolution dated 03/15/2018, issued by the AEPD in the Guardianship procedure of Rights indicated with the number TD/02466/2017.

It is stated that the rights protection procedure is followed with the USO entity by the failure to pay attention to the right of opposition exercised by the claimant, outlined in the previous section. As indicated in said Resolution, the entity USO did not formulate allegations during the procedure and it was agreed to uphold the claim made by the complaining party and urge USO so that, within ten business days following the notification of this resolution, send to the complaining party certification stating that you have complied with the right of opposition exercised by the latter or denies the same on grounds and with reasons.

SEVENTH: On 06/09/2022, a resolution proposal was formulated in the sense of that the Director of the Spanish Agency for Data Protection declares the file of the actions, in relation to the imputation to the USO entity, of a possible violation of the provisions of article 6 of the RGPD.

The mentioned resolution proposal was notified to the claimed entity. the term granted to it to formulate allegations elapsed without this Agency any letter has been received.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

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PROVEN FACTS

1. The entity Unión Sindical Obrera (USO), for the development of its objectives, is structure in Professional Federations and Territorial Unions.
2. One of the professional federations integrated in the Unión Sindical Obrera is the

Federation of Attention to Citizenship FAC-USO, which has legal personality

own and is endowed with its own Statutes and Regulations.

3. FAC-USE, as declared in the privacy policy inserted on its website

([***URL.1](#)), is responsible for the personal data it collects.

4. In 2017, the complainant requested FAC-USO to be removed from the list of

mail distribution and/or the corresponding database.

5. After the request outlined in the Fourth Proven Fact, the party

claimant received various emails in his professional email account

emails sent by the entity FAC-USO, which are detailed in the

Background First.

6. Due to the facts outlined in the Fourth and Fifth Proven Facts, the

present sanctioning procedure, followed against the entity Unión Sindical Obrera

(USE).

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of the RGPD, grants to each authority of

control and as established in articles 47, 48.1, 64.2 and 68.1 of the LOPDGDD,

The Director of the Agency is competent to initiate and resolve this procedure.

Spanish Data Protection.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures."

II

Prior to examining the substantive issue, it is appropriate to analyze the exception

alleged by USO, on the lack of passive standing.

The aforementioned USE understands that the responsibility for the facts denounced must be imputed to the FAC-USO, as it is the entity responsible in its field of action, in this case, the General Administration of the State, with capacity and autonomy to organize their activity.

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It has been accredited that FAC-USO is a professional federation integrated in the confederal organization USO, but it takes the legal form of a “union” and, as such, has its own legal personality and full capacity to act, in accordance with established in article 4.1 of Organic Law 11/1985, of August 2, on Freedom Union, according to which:

“The unions established under this Law, to acquire legal personality and full capacity to act, must deposit, through their promoters or leaders, their statutes in the public office established for that purpose.

Regarding the "Responsibility of unions", article 5.1 of the aforementioned Law Organic sets:

“The unions constituted under the protection of this Law shall be liable for the acts or agreements adopted by their statutory bodies in the sphere of their respective competencies”.

The USO Confederal Statutes themselves establish that it is made up of Professional Federations and Territorial Unions, which "will be endowed with Statutes and Own regulations that must be registered. In accordance with the provisions of the Law

Organic Law 11/1985, of August 2, on Freedom of Association, will have legal personality own. They will define the corresponding objectives, structure and operation, according to its characteristics and specificities.

In the same way, the FAC-USO Statutes indicate that with this denomination "the constitutes a trade union organization that declares itself autonomous within the scope of the Spanish territory, integrated in the Trade Union Confederation of the Workers Trade Union, subscribing to its fundamental objectives and assuming the rights and duties arising from these Statutes", which "is constituted under the protection of the current legislation".

On the other hand, FAC-USO is the entity responsible for the personal data collected and treated in their area of responsibility.

It is the FAC-USO itself, and not the USO trade union confederation, that is responsible for sending of the emails object of the claim, and FAC-USO is the entity to which the claimant party expressed its opposition to the receipt of such emails and the cancellation of your distribution lists.

Thus, the exception alleged by the USO confederal organization regarding the lack of Passive standing must be estimated.

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: DECLARE the file of the actions, in relation to the imputation to the entity UNION SINDICAL OBRERA, with NIF G28567402, of a possible violation of the provisions of article 6 of the RGD.

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SECOND: NOTIFY this resolution to UNION SINDICAL OBRERA.

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-](https://sedeagpd.gob.es/sede-electronica-web/)

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.

Sea Spain Marti

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