

□ File No.: EXP202102453

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Mr. A.A.A., on behalf of Ms. B.B.B., Ms. C.C.C., Ms. D.D.D., Mr.
E.E.E., Ms. F.F.F. and Mrs. G.G.G. (hereinafter, the complaining party), for the purposes of
notifications, dated July 21, 2021 filed a claim with the Agency

Spanish Data Protection. The claim is directed against the Union
Intersectorial Workers Province of Alicante with NIF G42694943 (hereinafter,
the claimed party). The grounds on which the claim is based are as follows:

The complaining party states that the president of the works council violates the
data protection regulations when publishing the minutes of the works council in the
union bulletin board and in a WhatsApp group. In the aforementioned documents
find the signature of all union representatives involved in the committee.

And, they provide the following documentation:

Photographs and screenshots of WhatsApp in which the signatures of the
members of the works council.

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 delivered on October 25, 2021 as recorded

in the acknowledgment of receipt that works in the file.

On November 12, 2021, this Agency received a written response

alleging: "that the only possible data in the minutes would be the names of the

committee members and their signature, to the extent that it is associated with a particular

union, but that association has no relevance in this environment, since

which is well known to all company personnel and that

knowledge is implicit in the election and acceptance of the position.

Neither the DNI, nor the sex, nor the address, nor any other personal information appears in the minutes.

For this reason, no member of the committee may feel that their right has been violated.

The photographs provided of the minutes are in bad faith, since they are not very legible, with the

clear purpose of sowing doubt about whether there could be any personal data, which is not

exists.

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In addition, note that the claimant bases his complaint, solely and exclusively, on

the public exposure of the signatures. That is to say, that for him the minutes themselves, if

exposed without signatures, they would not represent any problem. How can it be from another

form, since its exposure is lawful and its content does not contain any personal data.

Therefore, everything lies in the exposure of the signatures.

However, we understand that the signature itself, for these purposes, is not a piece of data

personnel deserving of protection. Certainly the spelling can constitute a datum

personal, but not in this environment, since the signature is stamped in the exercise of the functions of the works council, and therefore that validating signature is necessarily public.

The union board is in a specific and isolated place, protected from any visit.

We attach a company certificate that leaves no room for doubt.

And regarding the WhatsApp group, it is not an open group, accessible to anyone, and no personal data is posted on it either.”

THIRD: On December 16, 2021, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant was admitted for processing.

FOURTH: On January 24, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (in hereinafter, LPACAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD.

FIFTH: Having been notified of the aforementioned initiation agreement, the party complained against submitted a written allegations in which, in summary, it states: "that they consider reproduced our prior response and that, despite our clear response, it is agreed to initiate sanctioning procedure, estimating the violation as serious.

Said agreement is adopted having as legal support the reference to the report of the Legal Office of the AEPD number 048939/2016.

We do not know the specific referenced report that supports the beginning of this penalty procedure.

Regarding identification by signature. The minutes only contain the name and signature of the representatives, which is the minimum they can contain, since an act without signing is a worthless document.

With respect to that the signature does not add more information. It is precisely everything contrary. The signature is a key element of authenticity that makes voters see be true what the record contains.

With respect to creating a risk situation. Union representatives are people who have voluntarily presented themselves to an electoral process, and who are known by everyone, company and staff, adding also that they must be

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acquaintances, they cannot be anonymous or people who must hide any data. Nope it can be understood that a risk situation is generated.

Regarding the proportionality of the publication. The records have been exposed on the company's internal bulletin board, where only the workers of this and no one else. The minutes have only been able to be seen by the people who are members of the company's staff, who are the voters of the union representatives, and those directly interested in the content of the themselves. In the company there is a double access control (the proof of which has already been provided), and it is not possible for the union board to be seen by people other than them. Either the wasap group that is closed and requires a filtered action to be a member.

In conclusion, after the previous allegations, we understand that only the archive of the file, without imposition of any sanction”.

SIXTH: Dated February 22, 2022, it is sent both by postal mail and by electronically the report of the Legal Office of the AEPD number 048939/2016, to the that the respondent party refers to in its allegations to the Initiation Agreement,

stating as confirmation of receipt of the notification by post on the 31st of

March 2022, and as an automatic electronic rejection on March 5, 2022.

SEVENTH: On March 18, 2021, the instructor of the procedure agreed to give

by reproduced for evidentiary purposes the claim filed by the party

claimant and his documentation, the documents obtained and generated during the

phase of admission to processing of the claim.

Likewise, the allegations to the agreement are considered reproduced for evidentiary purposes.

initiation of the referenced sanctioning procedure, presented by the party

claimed.

EIGHTH: On May 4, 2022, a resolution proposal was formulated,

proposing that the Director of the Spanish Data Protection Agency

sanction the Intersectoral Union of Workers Province of Alicante, with NIF

G42694943, for an infringement of Article 5.1.c) of the RGPD, typified in Article

83.5 of the RGPD, with a fine of 2,000 euros (two thousand euros).

NINTH: Once the proposed resolution was notified, the party complained against did not present

pleadings brief.

PROVEN FACTS

FIRST: The claimed party has presented the minutes of the Company Committee, in the

union bulletin board and in a WhatsApp group, appearing in said minutes the

handwritten signatures of all union representatives involved in the

Works council.

SECOND: WhatsApp photographs and screenshots in which the signatures are displayed

of the members of the works council.

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FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

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

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

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

In response to the allegations presented by the respondent entity, it is considered

proven that the party complained against has exposed the minutes of the Works Committee, in the

union bulletin board and in a WhatsApp group, appearing in said minutes the

handwritten signatures of all union representatives involved in the

Works council.

In this sense, the report of the Legal Office of the AEPD number 048939/2016,

that its conclusions are transferable to the present case, since the minutes contain

the identification of the signatories with their name, surname and position without the signature

handwritten, generally provides more information on what was discussed in the

full, while giving rise to a situation of risk for the signatory so, in

principle, it must be considered that its publication in general is not in accordance with the principle of proportionality, and therefore it is understood that the entity claimed has violated article 5.1 c) of the RGPD, which governs the principles minimization of personal data, as well as the proactive responsibility of the data controller to demonstrate compliance.

In this same sense, the interpretative criterion number CI/004/2015, of July 23, 2015, issued jointly by the Council of Transparency and Good Governance (CTBG) and the AEPD, regarding active advertising of the handwritten signature and also of the DNI data. In this criterion, concludes, regarding the handwritten signature, that it cannot be ignored that the publication of the handwritten signature can generate a risk situation due to the possibility of reproduction by any person who accesses the document, so it is recommended to remove all handwritten signatures of the documents, "provided that the absence of the signatures is replaced with some type of mention that shows that the original of the same has been actually signed.

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III

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

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 (“lawfulness,

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, paragraph 1, the further processing of personal data for archiving purposes in public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken reasonable to eliminate or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) kept in a way that allows the identification of the interested parties during longer than necessary for the purposes of the processing of personal data; the

Personal data may be kept for longer periods provided that it is processed exclusively for archival purposes in the public interest, research purposes scientific or historical or statistical purposes, in accordance with Article 89, paragraph 1, without prejudice to the application of the appropriate technical and organizational measures that

This Regulation is imposed in order to protect the rights and freedoms of the interested party ("limitation of the retention period");

f) 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 ("integrity and confidentiality").

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

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 after 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 control authority will have of all the following corrective powers indicated below:

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 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 particular case"

SAW

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the RGPD. For the purpose of determine the administrative fine to be imposed, the provisions of the article 83, section 2 of the RGPD, which states:

"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

alleviate 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,

taking into account the technical or organizational measures that they have applied under

of 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;

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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.

For its part, in relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its article 76, "Sanctions and corrective measures", establishes:

"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 delegate.
- 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 controversies between them and any interested party”.

In accordance with the precepts transcribed, in order to set the amount of the sanction of fine to be imposed in this case on the entity claimed for the typified infraction in article 83.5.a) of the RGPD for which the claimed party is responsible is the following factors are considered concurrent:

-Article 83.2.b) GDPR. “Intentionality or negligence in the infringement”: In this case Specifically, there is gross negligence in posting to the bulletin board union and in a WhatsApp group said minutes with the handwritten signatures of all the trade union representatives who intervene in the Company Committee.

Considering the exposed factors, the valuation reached by the fine for the imputed infringement is 2,000 euros.

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7th

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2

d) it is established that each control authority may “order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period...”. The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

In such a case, this Agency may require the person in charge to adapt the processing of personal data carried out in accordance with data protection regulations

in accordance with what is indicated in the preceding Legal Basis.

It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGPD, being able to motivate such conduct the opening of a subsequent administrative procedure sanctioning

The text of the resolution establishes the infractions committed and the facts that have given rise to the violation of the regulations for the protection of data, from which it is clearly inferred what measures to adopt, without prejudice that the type of specific procedures, mechanisms or instruments for implement them corresponds to the sanctioned party, since it is responsible for the treatment who fully knows your organization and has to decide, based on the proactive responsibility and risk approach, how to comply with the RGPD and the LOPDGDD.

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 INTERSECTORAL WORKERS' UNION

PROVINCE OF ALICANTE, with NIF G42694943, for a violation of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a fine of 2,000 euros (two thousand euros).

SECOND: NOTIFY this resolution to INTERSECTORIAL UNION
WORKERS PROVINCE OF ALICANTE.

THIRD: REQUIRE THE INTERSECTORAL WORKERS' UNION
PROVINCE OF ALICANTE so that, within a month in accordance with the established in article 58.2.d) of the RGPD, adopt the necessary measures to that handwritten signatures do not appear in the publication of the minutes, in accordance

with the provisions of article 5.1 f), as well as the provision of evidence

proof of compliance with what is required.

FOURTH: 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

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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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Director of the Spanish Data Protection Agency

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