 File No.: PS/00616/2021

IMI Reference: A56ID 162649- Case Register 353519

RESOLUTION OF SANCTIONING 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 claiming party) dated November 3,

2020 filed a complaint with the Austrian data protection authority. The

The claim is directed against FLORAQUEEN FLOWERING THE WORLD S.L., with NIF

B63609051 (hereinafter, FLORAQUEEN). The reasons on which the claim is based

are the following:

The complaining party claims for a right of deletion not properly attended.

After the request for deletion of the account and confirmation by the person in charge

it looks like the person still has access to it.

On October 2, 2020, he received an email confirming receipt

of your request for deletion of data.

On October 12, 2020, he sent a new email to the entity communicating that his

account is still active and on October 13 they reply that everything has been deleted. That

The same day he responds that he has verified that his account is still active.

On October 20, he receives a response indicating that they have tried again to delete his

account

On October 23, he sends a new email indicating that his account is still open.

Along with the claim, provide:

- Screenshot of an email dated October 2, 2020 and sender

***EMAIL.1 in which, in response to an email from the complaining party in which

requested that your account and all your personal information be deleted in accordance with the

article 17 of the GDPR, you are informed that your request was sent to the department

responsible.

- Screen print of an email dated October 4, 2020 from the address

email address from the complaining party to ***EMAIL.2 in which he thanks and

asks to be informed when the deletion is carried out.

- Screen print of an email dated October 12, 2020 from the

email address of the complaining party to ***EMAIL.2 in which

asks if there is any update on your application and indicates that your account is still active.

- Screen print of an email dated October 13, 2020 from the

email address ***EMAIL.1 to the email address of the

complaining party in which it is informed that everything has been eliminated.

- Screen print of an email dated October 13, 2020 from the

email address of the complaining party to ***EMAIL.2 in which it indicates

that nothing has been removed and attached a screenshot where you can see

who accesses your account. And request that the email be forwarded to the DPD or

privacy department.

- Screenshot of an email dated October 20, 2020 from the

email address of the complaining party to ***EMAIL.2 in which

ask if there is any news about your application.

- Screenshot of an email dated October 20, 2020 from the

email address ***EMAIL.1 to the email address of the

complaining party stating that an attempt was made to delete your account again and you were

ask for a couple of days.

- Screenshot of an email dated October 23, 2020 from the

email address of the complaining party to ***EMAIL.2 in which it indicates

that you can still access your account and can see all of your personal information.

SECOND: Through the "Internal Market Information System" (hereinafter

IMI), regulated by Regulation (EU) No. 1024/2012, of the European Parliament and of the

Council, of October 25, 2012 (IMI Regulation), whose objective is to promote the

cross-border administrative cooperation, mutual assistance between States

members and the exchange of information, the aforementioned claim was transmitted on the 11th

November 2020 and was given a registration date at the Spanish Agency

of Data Protection (AEPD) that same day. The transfer of this claim to the

AEPD is carried out in accordance with the provisions of article 56 of the Regulation

(EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016, regarding the

Protection of Natural Persons with regard to Data Processing

Personal Information and the Free Circulation of these Data (hereinafter, GDPR), taking

into account its cross-border nature and that this Agency is competent to act

as the main control authority, given that FLORAQUEEN has its registered office and

unique establishment in Spain.

According to the information incorporated into the IMI System, in accordance with the

established in article 60 of the GDPR, act as a "control authority

data subject", in addition to the Austrian data protection authority, the data protection authority

data protection from Poland, Norway, Denmark, Estonia, Hungary, Italy, France,

Finland and the German authority in Berlin, all of them under article 4.22 of the

GDPR, given that the interested parties residing in said Member States are

affected or are likely to be substantially affected by the treatment

object of this proceeding. Interested control authority was also declared

that of Sweden.

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THIRD: On February 16, 2021, in accordance with article 64.3 of

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

guarantee of digital rights (LOPDGDD), the claim was admitted for processing

submitted by the complaining party.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in

matter, by virtue of the functions assigned to the control authorities in the

article 57.1 and the powers granted in article 58.1 of the Regulation (EU)

2016/679 (General Data Protection Regulation, hereinafter GDPR), and

in accordance with the provisions of Title VII, Chapter I, Second Section, of the

LOPDGDD, having knowledge of the following extremes:

- On March 11, 2021, the entity's privacy policy included

verified that the following information appears: "The person in charge designated for

monitor privacy-related issues is at your disposal to

resolve your doubts and requests for the exercise of your rights. These are your data

contact:

Email address: ***EMAIL.3

Phone number: ***PHONE.1

- On March 11, 2021, the telephone number that appears has been called repeatedly

in the privacy policy ***TELEPHONE.1 and no response has been received.

- That same day an email was sent to the address ***EMAIL.1, with

copy to the address ***EMAIL.2, indicating that a requirement can be downloaded

of information of the Spanish Data Protection Agency in the notification system

electronic notification, but received as a response:

“Could not be delivered to these recipients or groups:

The message could not be delivered. Despite repeated attempts to contact

tact with the recipient's email system, the recipient has not responded.”

- On March 11, 2021, a request was sent through the notification system

electronic documentation, which was automatically rejected.

- On November 17, 2021, a new requirement was sent through the system

electronic notification, which was accepted by the entity on November 25,

2021 without any response having been received.

In said requirement, the entity was requested to provide information regarding the

request for cancellation of data from the complaining party, having to communicate:

1. Description of the procedure established to meet the right of

data cancellation.

2. Details of whether the affected party's data has been canceled

3. Decision adopted regarding this claim. emails are attached

emails provided by the claimant.

5.

4. Evidence of the response provided to the claimant's request,

regarding the exercise of the rights regulated in articles 15 to 22 of the

GDPR.

Report on the causes that have motivated the incidence that has

originated the claim.

Report on the measures taken to prevent the occurrence of

similar incidents, implementation dates and controls carried out to

check its effectiveness.

6.

FIFTH: On January 5, 2020, the Director of the AEPD adopted a

Proposal for a draft decision to initiate disciplinary proceedings. Following

the process established in article 60 of the GDPR, that same day it was transmitted to

through the IMI system this draft decision proposal as an informal consultation

and the authorities concerned were informed that they had two weeks from that

time to comment.

SIXTH: On January 24, 2022, the Director of the AEPD adopted a project

decision to initiate disciplinary proceedings. Following the established process

in article 60 of the GDPR, that same day this

draft decision and the authorities concerned were informed that they had

four weeks from that time to raise pertinent objections and

motivated. Within the term for this purpose, the control authorities concerned shall not

presented pertinent and reasoned objections in this regard, for which reason it is considered

that all authorities agree with said draft decision and are

linked by it, in accordance with the provisions of section 6 of article 60

of the GDPR.

This draft decision was notified to FLORAQUEEN in accordance with the rules
established in the LPACAP on February 4, 2022, as stated in the acknowledgment of
receipt that works in the file.

SEVENTH: On July 20, 2022, the Director of the Spanish Agency for
Data Protection agreed to start a sanctioning procedure against FLORAQUEEN, in order to
to issue a warning, in accordance with the provisions of articles 63 and 64 of the
LPACAP, for the alleged violation of Article 12 of the GDPR, typified in Article
83.5 of the GDPR, in which it is indicated that you have a period of ten days to present
allegations.

This start-up agreement, which was notified to FLORAQUEEN in accordance with the rules
established in Law 39/2015, of October 1, on Administrative Procedure
Common Public Administrations (LPACAP), was collected on July 22
of 2022, as stated in the acknowledgment of receipt that is in the file.

EIGHTH: Notification of the aforementioned initiation agreement in accordance with the established regulations
in the LPACAP and after the period granted for the formulation of allegations, the
has verified that no allegation has been received from FLORAQUEEN.

Article 64.2.f) of the LPACAP -provision of which FLORAQUEEN was informed in
the agreement to open the procedure - establishes that if no allegations are made
within the period provided for the content of the initiation agreement, when it

contains a precise pronouncement about the imputed responsibility, it may
be considered a motion for a resolution. In the present case, the agreement to initiate the

disciplinary file determined the facts in which the

imputation, the infringement of the GDPR attributed to FLORAQUEEN and the sanction that could

impose. Therefore, taking into consideration that FLORAQUEEN has not formulated

allegations to the agreement to start the file and in attention to what is established in the

Article 64.2.f) of the LPACAP, the aforementioned initiation agreement is considered in the

present case proposed resolution.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: On October 2, 2020 at 11:58 p.m. an email was sent

from the address ***email.1 to ***EMAIL.2, with the following message (in English the

original): "Good afternoon, We have passed this information to our department

responsible. Thank you very much for using our service. Sincerely (…)]". This

message responds to a previous message that said (in English the original): "Hello, by

Please delete my account and all associated personal data in accordance with art. 17

of the GDPR. Please let me know when account deletion is done-

he is a month old Thank you, A.A.A. ***EMAIL.2"

SECOND: On October 4, 2020 at 08:40 a.m., in response to the email

previously reviewed, an email was sent from the address ***EMAIL.3

to ***EMAIL.4, with the following message (in English the original): "Hello, Thank you very much,

Please contact me when the deletion is complete – thank you XXXXXXX".

THIRD: On October 12, 2020 at 9:37 a.m., in response to the email

previously reviewed, an email was sent from the address ***EMAIL.3

to ***EMAIL.4, with the following message (in English the original): "Hello, Thank you very much,

I just wanted to check if you had any news about my GDPR deletion request. My

account is still active. Thank you, XXXXXXXX."

FOURTH: On October 13, 2020 at 3:51 p.m. an email was sent

from the address ***email.1 to ***EMAIL.2, with the following message (in English the

original): “Good afternoon, Mr. XXXXXXXX, Everything has been deleted. Thank you for your

time and understanding (...)]”.

FIFTH: On October 13, 2020 at 3:56 p.m., in response to the email

previously reviewed, an email was sent from the address ***EMAIL.3

to ***EMAIL.4, with the following message (in English the original): “Hello, XXXXXX, no,

nothing has been deleted. I can still access my account. I attach a screenshot of

screen. Please forward this email to your Data Protection Delegate

Data or the privacy department. Thank you, XXXXXXX." A screenshot is attached

screen where you can see the user's profile on the FLORAQUEEN page

of the complaining party.

SIXTH: On October 20, 2020 at 7:20 a.m., in response to the email previously

reviewed, an email was sent from address ***EMAIL.3 to ***EMAIL.4,

with the following message (in English the original): “Hello, any news about this?

You have until November 2, then I will inform my local data protection authority

data on this case. Thank you, XXXXX."

SEVENTH: On October 20, 2020 at 12:22 p.m. an email was sent

from the address ***email.1 to ***EMAIL.2, with the following message (in English the

original): “Good morning, XXXXX, We have tried again to delete your data

personal, please allow a couple of days and if it still works, please

send us another email. We are very sorry for the inconvenience and thank you very much

for your patience. Kind regards (…)]".

EIGHTH: On October 23, 2020 at 11:47 a.m., in response to the email

previously reviewed, an email was sent from the address ***EMAIL.3

to ***EMAIL.4, with the following message (in English the original): “Hello, I can still start

login to my account, all personal data is visible. I will report this case to my

local data protection authority https://www.data-protection-authority.gv.at on 2

November, a month after this case was opened. Thank you, XXXXXXXXX."

FUNDAMENTALS OF LAW

Competition and applicable regulations

Yo

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

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

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

Organic Law 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 Protection Agency

of data.

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

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

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

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

previous questions

In the present case, in accordance with the provisions of article 4.1 and 4.2 of the GDPR,

consists of the processing of personal data, since

FLORAQUEEN collects, among others, the following personal data from

natural persons: name and email, among other treatments.

FLORAQUEEN carries out this activity in its capacity as data controller,

given that it is the one who determines the ends and means of such activity, by virtue of article

4.7 of the GDPR. In addition, it is a cross-border processing, since

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FLORAQUEEN is established in Spain, although it provides services to other countries in the

European Union.

The GDPR provides, in its article 56.1, for cases of cross-border processing,

provided for in its article 4.23), in relation to the competence of the authority of

main control, that, without prejudice to the provisions of article 55, the authority of

control of the main establishment or of the only establishment of the person in charge or of the

The person in charge of the treatment will be competent to act as control authority

for the cross-border processing carried out by said controller or

commissioned in accordance with the procedure established in article 60. In the case

examined, as has been exposed, FLORAQUEEN has its unique establishment in

Spain, so the Spanish Agency for Data Protection is competent to

act as the main supervisory authority.

For its part, the right to delete personal data is regulated in article

17 of the RGPD and the modalities of exercise of the rights of the interested parties are

detailed in article 12 of the GDPR.

II

Right of erasure

Article 17 “Right to erasure (“the right to be forgotten”)” of the GDPR establishes:

"1. The interested party shall have the right to obtain without undue delay from the person responsible for the

treatment the deletion of personal data that concerns you, which will be

obliged to delete without undue delay the personal data when any

of the following circumstances:

a) the personal data is no longer necessary in relation to the purposes for which

those that were collected or otherwise treated;

b) the interested party withdraws the consent on which the treatment of

in accordance with Article 6(1)(a) or Article 9(2),

letter a), and this is not based on another legal basis;

c) the data subject opposes the processing in accordance with article 21, paragraph 1,

and no other legitimate reasons for the treatment prevail, or the interested party

object to the processing pursuant to Article 21(2);

d) the personal data have been unlawfully processed;

e) the personal data must be deleted for the fulfillment of a

legal obligation established in the Law of the Union or of the States

members that applies to the data controller;

f) the personal data have been obtained in connection with the offer of services

of the information society mentioned in article 8, paragraph 1.

(…)

3. Sections 1 and 2 will not apply when the treatment is necessary:

a) to exercise the right to freedom of expression and information;

b) for compliance with a legal obligation that requires data processing

imposed by the law of the Union or of the Member States that applies to the

responsible for the treatment, or for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers conferred on the person responsible;

c) for reasons of public interest in the field of public health in accordance with

Article 9, paragraph 2, letters h) and i), and paragraph 3;

d) for archiving purposes in the public interest, scientific or historical research purposes or

statistical purposes, in accordance with Article 89(1), to the extent that

the right indicated in paragraph 1 could make it impossible or hinder

seriously impair the achievement of the objectives of such treatment, or

e) for the formulation, exercise or defense of claims.”

In the present case, it is clear that the complaining party had requested FLORAQUEEN

the deletion of your personal data on numerous occasions.

Exercise of the rights of the interested party

IV.

Article 12 "Transparency of information, communication and modalities of

exercise of the rights of the interested party" of the GDPR establishes:

"1. The person in charge of the treatment will take the appropriate measures to facilitate the

interested all information indicated in articles 13 and 14, as well as any

communication pursuant to articles 15 to 22 and 34 relating to processing, in the form

concise, transparent, intelligible and easily accessible, with clear and simple language, in

particular any information directed specifically to a child. Information

shall be provided in writing or by other means, including, if applicable, by

electronics. When requested by the interested party, the information may be provided

verbally as long as the identity of the interested party is proven by other means.

2. The person responsible for the treatment will facilitate the exercise of their rights by the interested party.

under articles 15 to 22. In the cases referred to in article 11, paragraph

2, the person in charge will not refuse to act at the request of the interested party in order to exercise

your rights under articles 15 to 22, unless you can show that you do not

is in a position to identify the interested party.

3. The person responsible for the treatment will provide the interested party with information regarding their

proceedings on the basis of a request under articles 15 to 22, without

undue delay and, in any case, within one month of receipt

of the request. This period may be extended by another two months if necessary,

taking into account the complexity and number of requests. The responsible

will inform the interested party of any of said extensions within a period of one month from

from receipt of the request, indicating the reasons for the delay. when the

interested party submits the application by electronic means, the information will be provided by

electronic means when possible, unless the interested party requests that it be

facilitate otherwise.

4. If the person responsible for the treatment does not process the request of the interested party, he will

will inform without delay, and no later than one month after receipt of the

application, the reasons for not acting and the possibility of presenting a

claim before a control authority and take legal action. (…)"

In the present case, it is clear that the complaining party requested the deletion of his account

and your personal data on October 2, 2020. However, as of November 3,

2020 had not yet received a response from FLORAQUEEN. neither has

It has been proven in this file that FLORAQUEEN had given

response to the request of the complaining party subsequently.

According to the evidence available at this time in

disciplinary procedure resolution, it is considered that the known facts are

constituting an infringement, attributable to FLORAQUEEN, for violation of the

Article 12 of the GDPR, in conjunction with Article 17 of the GDPR.

Classification of the infringement of article 12 of the GDPR

V

The aforementioned infringement of article 12 of the GDPR supposes the commission of the infringements

typified in article 83.5 of the GDPR that under the heading "General conditions

for the imposition of administrative fines" provides:

Violations of the following provisions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of maximum EUR 20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the

total annual global business volume of the previous financial year, opting for

the highest amount:

(…)

b) the rights of the interested parties in accordance with articles 12 to 22; (…)"

In this regard, the LOPDGDD, in its article 71 "Infractions" establishes that:

"The acts and behaviors referred to in sections 4,

5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result

contrary to this organic law".

For the purposes of the limitation period, article 74 "Infringements considered minor" of

the LOPDGDD indicates:

"The remaining infractions of a legal nature are considered minor and will prescribe after a year.

merely formal of the articles mentioned in sections 4 and 5 of article 83

of Regulation (EU) 2016/679 and, in particular, the following:

(…)

c) Failure to respond to requests to exercise the rights established in the

Articles 15 to 22 of Regulation (EU) 2016/679, unless it results from

application of the provisions of article 72.1.k) of this organic law".

Penalty for violation of article 12 of the GDPR

SAW

Without prejudice to the provisions of article 83 of the GDPR, the aforementioned Regulation provides

in section 2.b) of article 58 "Powers" the following:

"Each control authority will have all the following corrective powers

indicated below:

(…)

b) send a warning to any person in charge or person in charge of the treatment

when the processing operations have infringed the provisions of the

this Regulation; (…)"

For its part, recital 148 of the GDPR indicates:

"In the event of a minor infraction, or if the fine likely to be imposed

constitutes a disproportionate burden on a natural person, rather than

penalty by means of a fine, a warning may be imposed. should however

special attention should be paid to the nature, seriousness and duration of the infringement, to its

intentional nature, to the measures taken to alleviate the damages suffered,

to the degree of responsibility or any relevant prior infringement, to the manner in which

that the supervisory authority has become aware of the infringement, to compliance

of measures ordered against the person in charge or in charge, to adherence to codes of

conduct and any other aggravating or mitigating circumstances."

According to the evidence available at the present time of

disciplinary procedure resolution, it is considered that the offense in question

is slight for the purposes of article 83.2 of the GDPR given that in the present case,

taking into account that there is no record in this Agency of FLORAQUEEN for not

having duly attended to the exercise of a right of deletion and that it is

of an "Autonomous" type company, allows to consider a reduction of the fault

in the facts, for what is considered in accordance with the Law, not to impose a sanction

consisting of an administrative fine and replace it by directing a warning to

FLORAQUEEN.

VII

imposition of measures

It is deemed appropriate to order the person in charge to proceed to

certify before this Agency that it has deleted the personal data of the party

claimant and has duly communicated it, as indicated in article 12 of the

GDPR, in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to the

which each control authority may "order the person responsible or in charge of the

processing that the processing operations comply with the provisions of the

this Regulation, where appropriate, in a certain way and within a certain

specified term…". The imposition of this measure is compatible with directing a

warning, according to the provisions of art. 83.2 of the GDPR.

It is noted that not meeting the requirements of this body could be

considered as an administrative offense in accordance with the provisions of the GDPR,

classified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the

opening of a subsequent administrative sanctioning procedure.

Therefore, in accordance with the applicable legislation and assessed the criteria of

graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS FLORAQUEEN FLOWERING THE WORLD S.L., with NIF

B63609051, for a violation of Article 12 of the GDPR, typified in Article 83.5

of the GDPR, a warning.

SECOND: ORDER FLORAQUEEN FLOWERING THE WORLD S.L., with NIF

B63609051, which within 30 days certifies before this Agency that it has suppressed

all the personal data of the complaining party and has communicated it

duly, in accordance with the provisions of article 12 of the GDPR.

THIRD: NOTIFY this resolution to FLORAQUEEN FLOWERING THE

WORLD S.L.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

In accordance with the provisions of article 60.7 of the GDPR, this information will be

resolution, once it is final, to the control authorities concerned and to the Committee

European Data Protection.

Against this resolution, which puts an end to the administrative process 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 reversal before the Director of the Spanish Agency for Data Protection within a period of one month from count 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 for in article 46.1 of the referred Law.

Finally, it is noted 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 through writing addressed to the Spanish Data Protection Agency, presenting it through of the Electronic Registry of the Agency [https://sedeagpd.gob.es/sede-electronica-web/], or through any of the other registries 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 proceedings within a period of two months from the day following the Notification of this resolution would terminate the precautionary suspension.

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