

Procedure No.: PS/00403/2018

938-051119

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and  
in consideration of the following

### BACKGROUND

FIRST: Dated 08/16/2018 has entry in the Spanish Protection Agency  
of Data (AEPD) a claim from D. <sup>a</sup> A.A.A. (hereinafter the claimant)

The claim is based on the processing of your personal data carried out  
by an agent of ASNORTE, S.A., (hereinafter ASNORTE or the claimed party) with a  
purpose other than that for which the claimant provided them to the entity claimed.

The treatment in which the conduct that gives rise to this claim took place  
consisted of an invitation or "friendship request" that D. B.B.B., an employee of the  
claimed, sent him through the social network Facebook.

The claimant has explained that on 07/09/2018 she received a phone call  
addressed to his mother, in his capacity as holder of a death insurance policy signed with  
SANTA LUCÍA, S.A., in order to offer you home insurance. He adds that he communicated to  
your interlocutor that she would be in charge of receiving the information about the conditions of  
the offered policy and later he would provide it to his mother. With this finality,  
after receiving a new phone call informing him that the  
budget of the policy was concluded, he is quoted in what the claimant calls  
"Santa Lucía dependencies, located at \*\*\*ADDRESS.1", indicating that upon arrival  
I must have asked for "B.B.B." On 07/11/2018 they inform you in those dependencies of  
insurance coverage. He states that on 07/16/2018 he knows that he has a  
invitation from a certain B.B.B. through Facebook, checking when viewing the photos that

that person is the “SANTA LUCIA commercial” who attended him.

The claimant attaches to her claim the copy of the DNI and a capture of screen, without date, in which five photographs appear whose content, which can only be seen in two of them, it is the face in profile and in front of a men. In the screenshot it appears in capital letters “B.B.B.” and below the legend “He sent you a friend request” followed by two boxes with the “Confirm” and “Delete” prompts.

It also provides the screenshot of what appears to be an email (there are no the electronic addresses of the issuer or the receiver) addressed to the claimant and signed by the Department of Information Security of Saint Lucia in which you communicate that they proceed to request information from their insurance agent in the area and They apologize for any inconvenience they may have caused you.

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SECOND: In view of the facts set forth in the claim, the AEPD, in the framework of file E6926/2018, and in accordance with the provisions of article 9.4 of Royal Decree-Law 5/2018, on urgent measures to adapt the Spanish law to the regulations of the European Union regarding the protection of data, through a document signed on 10/04/2018, transferred the claim to the entity SANTA LUCIA, S.A., COMPAÑÍA DE SEGUROS Y REASEGUROS, so that Within a month, it will provide this Agency with an explanation of the facts exposed in the claim, will detail the measures adopted to avoid that in the similar situations continue to occur in the future and also proceed to communicate its

decision to the claimant.

SANTA LUCIA, S.A., COMPAÑÍA DE SEGUROS Y REASEGUROS, responded to the informative request of the AEPD on 06/11/2018 and stated that he had carried out the pertinent inquiries before ASNORTE, S.A., AGENCY OF INSURANCE, verifying that this entity had not incurred in any irregularity in the treatment of the personal data of the claimant. He explained that the person made the friend request through the social network was a commercial collaborator of the Agent who made the friend request within the framework of actual activities personal.

SANTA LUCIA, S.A., COMPAÑÍA DE SEGUROS Y REASEGUROS added that had proceeded to send a letter to the claimant -a copy of which is provided- in which reports that the ASNORTE, S.A. Insurance Agent had informed him that whoever made the friend request through Facebook was an external collaborator of yours and that, having made that friend request in the framework of activities strictly personal, there had been no irregularity attributable to ASNORTE. The letter, which is dated 11/05/2018, has the anagram of Saint Lucia Insurance.

In accordance with article 9.5 of Royal Decree-Law 5/2018, as of 11/19/2018 the agreement for admission to processing of the claim that we examine.

THIRD: On 04/01/2019, the Director of the Spanish Protection Agency of Data agrees to initiate sanctioning proceedings against ASNORTE, S.A., for the alleged infringement of article 5.1.b) of the RGPD, typified in Article 83.5.a) of the Regulation (EU) 679/2016.

FOURTH: ASNORTE makes allegations to the agreement to initiate the procedure penalized on 04/24/2019. He requests that the file be archived and

In support of his claim, he invokes the following arguments:

-That at present "there is no relationship or link whatsoever, contractual or mercantile, between Mr. B.B.B. and ASNORTE". Provide, for this purpose, a copy of the letter of request for contractual termination signed by Mr. B.B.B. on 01/30/2019 in which communicates to the respondent her desire to terminate their relationship on 01/31/2019 trade.

-That by virtue of the commercial collaboration contract that Mr. B.B.B. subscribed with ASNORTE - contract that was in force when the events that

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have given rise to this sanctioning file- the aforementioned collaborator, assumed expressly the commitment to deal diligently with the commercial activity

entrusted and to develop it in accordance with the regulations that are applicable

between which the Commercial Collaboration Agreement expressly names the

data protection regulations. From the foregoing, the respondent concludes that

Non-compliances in which "in a completely

unilateral and voluntary (and outside the business relationship that linked it with ASNORTE

...) incurred by Mr. B.B.B."

- Provide a copy of the commercial collaboration contract signed between ASNORTE and the

Mr. B.B.B. in \*\*\*LOCALIDAD.1 on 05/01/2018. The general condition, in addition

to specify in the first stipulation that the aforementioned gentleman is named "collaborator

external" "to carry out the commercial activity of distribution of products of

insurance acting on behalf of the Insurance Agency", he adds in the last two

paragraphs of the second stipulation:

"The External Collaborator, in accordance with the provisions of art. 9 of the Law 12/1992 of the Agency Contract, undertakes to diligently deal with the commercial activity entrusted, not having to develop its activity outside of the regulations resulting from the application of the mediation activity in the private insurance and reinsurance sector, which will in no way affect its independence and freedom of organization.

Among the regulations to which the activity of the collaborator is related (...) to the data protection regulations of personal character, ..."

-The respondent affirms that she "shares" with this Agency that there was treatment of personal data of the current claimant made by Mr. B.B.B. "with a purpose other than that for which the data was provided by the claimant and collected by ASNORTE". However, he states that he cannot share with the AEPD that ASNORTE be attributed the responsibility for the treatment that "unilaterally and voluntarily carried out by Mr. B.B.B., ..."

-That the friend request sent by Mr. B.B.B. to today's claimant "through of your personal or private profile" supposes "a subsequent treatment of the data of the claimant made by Mr. B.B.B. in a private, personal or domestic setting and outside the commercial relationship" that linked him with ASNORTE.

In this line of argument, he explains that ASNORTE does not have an account with an open profile on the Facebook network. Provide documentation of the outcome of the search carried out in that social network with the word "ASNORTE" proving that only locates an unofficial profile of this entity that Facebook itself states that it has no affiliation or endorsement from anyone associated with that trade.

It adds that, for the performance of the functions of its activity professional, puts at the disposal of its mercantile collaborators tools computer and information systems among which the social network is not found Facebook.

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-That ASNORTE has been especially diligent in the "training, awareness and sensitization of its workers and commercial collaborators in terms of Data Protection".

It states that Mr. B.B.B., like the rest of the collaborators companies of ASNORTE, received, in the first place, the training package initial that establishes the regulations of insurance mediation for collaborators commercial companies that expressly includes a dedicated training module to protection of personal data.

Provide proof of a copy of the Certificate of Initial Training that is granted to Mr. B.B.B. for having successfully completed the distance training for the program that is detailed, with a duration of 50 theoretical teaching hours and practices, taught by Santa Lucía, Insurance and Reinsurance Company, S.A., The content of the training program is specified in the certificate whose block 1 deals with "The insurance contract. data protection of personal character", outlining among the matters to be dealt with the "Provisions general data protection, rights of people".

That, with the aim of reinforcing and expanding training, awareness and

sensitization of its personnel and commercial collaborators in terms of data protection, on the occasion of the entry into force of the RGPD, a specific GDPR training course or pill that Mr. B.B.B. completed on 05/25/2018. In proof of what has been stated, it provides a document with the anagram of Santa Lucía Seguros under the rubric "Píldora online RGPD", Protection of personal data, in which it is described through four points what is its content: 1, new legal framework; 2 principles GDPR protection; 3, GDPR obligations; 4, the company and the GDPR. Section 5 of the document bears the heading "Final Evaluation" and in a box contains the name of the collaborator Mr. B.B.B. in relation to which It is reported that he completed the online course "Píldora-RGPD" of a duration of 45 minutes and the so-called "Infographics -RGPD", with a duration of 25 minutes.

- That ASNORTE has been undertaking training and awareness efforts of its staff and collaborators in matters of data protection with the purpose that in the treatment of personal data that they carry out in the performance of their functions apply due guarantees.

- That although it considers that the events that occurred are exclusively attributable to the conduct of Mr. B.B.B., "has decided to reinforce the initial training that imparts to its commercial collaborators in compliance with the regulations of insurance mediation ... with the purpose of including, in the section dedicated to the data protection, reinforced guidelines regarding confidentiality due in relation to the personal data to which the collaborators companies agree..., as well as in relation to the principle of limitation of treatment purpose". Declares that it will proceed to include in block 1 of the initial training, "General Provisions of data protection" this

paragraph:

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“Confidentiality and limitation of the purpose of treatment.

Data protection regulations require that personal data be treated always guaranteeing their confidentiality and only according to the purposes (motives) for which people have provided (purpose limitation principle).

This implies that the personal data to which the collaborator accesses as a result of the work performed for the exclusive Agent,

They can only be treated by the collaborator for the purposes of the existing commercial relationship of collaboration and that the collaborator will not be able to use subsequently said data for other purposes or reasons, nor in its scope professional or in his personal or private sphere.

FIFTH: Article 89 of the LPACAP provides that the procedure will end, with archiving of the proceedings, without the need to formulate a resolution proposal, when in the instruction of the procedure it is made clear that it concurs, among others, the circumstance included in section d) of the precept: when the person liable appears exempt from liability.

In this sanctioning procedure, the following have been accredited:

following,

FACTS

1.- The claimant, A.A.A., with NIF \*\*\*NIF.1, declares that on 07/16/2018 she receives



an invitation through the social network Facebook made by the commercial “from Santa Lucía” who had attended him, on the occasion of summoning her to a meeting to inform her about a home insurance offer for his mother who is a client of the company.

2.- Work in the file, provided by the claimant, a screenshot, without date, in which five photographs appear whose content, which can only be visualized in two of them, is the face of a man in profile and in front. In the screenshot appears in all caps “B.B.B.” and below the legend "Te ha sent a friend request" followed by two boxes with the indications “Confirm” and “Delete”.

3.- The defendant, ASNORTE, S.A., Insurance Agency, with NIF A79259362, is Exclusive Insurance Agent of the insurance company SANTA LUCÍA, S.A., Insurance and Reinsurance Company, with NIF A28039790.

The informative request through which the AEPD transferred the received claim was sent not to the claimant, ASNORTE, but to the entity SANTA LUCIA insurance company.

4.-ASNORTE has confirmed that Mr. B.B.B. provided services in that entity in concept of external collaborator and maintained a commercial relationship with him by virtue of contract signed on 05/01/2018 subject to the provisions of article 8 of the Law 26/2006 on Private Insurance and Reinsurance Mediation.

5.- The aforementioned external collaborator appointment contract, signed by both

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parties, of which he provides a copy, indicates in the first clause that Mr.

BBB “external collaborator” “to carry out the commercial activity of distribution of insurance products acting on behalf of the Insurance Agency”.

The second clause, last two paragraphs, says: "The External Collaborator, Under the provisions of art. 9 of Law 12/1992 on Agency Contract, undertakes to deal diligently with the commercial activity entrusted, not must carry out its activity outside the regulations resulting from the application of mediation activity in the private insurance and reinsurance sector, which will not affect in any way their independence and freedom of organization. Among the regulations to which the activity of the collaborator must be circumscribed is related (...) to the personal data protection regulations, ..."

(The underlining is from the AEPD)

6.- Work in the file, provided by the claimed, the copy of the Certificate of Initial Training that was granted to Mr. B.B.B. for having successfully completed the distance training for the program that is detailed, with a duration of 50 hours theoretical and practical classes, taught by Santa Lucía, Compañía de Seguros y Reinsurance, S.A.,

The certificate specifies the content of the training program whose block 1 deals with “The insurance contract. Personal data protection personnel”, outlining among the matters to be dealt with the “General Provisions of the data protection, personal rights”.

7.- ASNORTE has declared that, on the occasion of the effective application of the RGPD, taught a specific training course or pill related to the EU Regulation 2016/679, that Mr. B.B.B. completed on 05/25/2018.

Provide a document with the anagram of Santa Lucía Seguros that bears heading "Pildora on line RGPD", Protection of personal data, in which

It describes through four points what its content was: 1, new legal framework; two GDPR protection principles; 3, GDPR obligations; 4, the company and the GDPR.

Section 5 of the document bears the heading "Final Evaluation" and in a box contains the name of the respondent's collaborator, Mr. B.B.B. regarding which is reported to have completed the online course "Pildora-RGPD" lasting 45 minutes and the so-called "Infographics -RGPD", with a duration of 25 minutes.

8.- Work in the file, provided by the respondent, a copy of a letter dated 01/30/2019, signed by Mr. B.B.B. and addressed to ASNORTE in which it communicates its desire to terminate on 01/31/2019 their commercial relationship. Currently "not There is no relationship or connection, contractual or commercial, between Mr. B.B.B." Y ASNORTE.

9.-ASNORTE has declared that, for the performance of the functions of its professional activity, makes available to its commercial collaborators

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computer tools and information systems among which is not the

Facebook social network. The defendant affirms that she does not have an account with her profile on the network Facebook.

Provides documentation of the result of the search carried out on that social network with the word "ASNORTE" proving that it only locates an unofficial profile of this entity that Facebook itself states that it has no affiliation or endorsement of anyone associated with that company.

10.- ASNORTE has declared in its pleadings brief to the initial agreement that, if well considers that the events that occurred are exclusively attributable to the conduct of the Mr. B.B.B., you have decided to reinforce the initial training that you give to your collaborators companies in compliance with insurance mediation regulations. Declares will proceed to include in block 1 of the initial training, "General Provisions of data protection" this paragraph: "Confidentiality and limitation of the purpose of treatment.

Data protection regulations require that personal data be treated always guaranteeing their confidentiality and only in according to the purposes (reasons) for which people have provided them (principle of purpose limitation).

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation 2016/679, General of Data Protection (RGPD) recognizes each control authority, and according to the established in articles 47 and 48.1 of Organic Law 3/2018 on the Protection of Data and Guarantees of digital rights (LOPDGDD), the Director of the Agency Spanish Data Protection is competent to resolve this procedure.

II

The RGPD dedicates article 5 to the principles that must govern the treatment of personal data and among them it mentions, section 1, letter b), that of "limitation of the purpose", precept that states:

"1. The personal data will be:

(...)

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 will consider incompatible with the initial purposes". (The underlining is from the AEPD)

In parallel, article 4 of the RGPD, "Definitions", offers a legal concept of treatment and understands by such "any operation or set of operations made on personal data or set of personal data, either by

automated procedures or not, such as the collection, registration, organization,

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conservation, adaptation or modification,

structuring,

extraction, query,

use, communication by transmission, broadcast or any other form of

authorization of access, collation, interconnection, limitation, deletion or destruction" (El

underlined is from the AEPD)

Recital (39) of the RGPD says: "All processing of personal data

It must be lawful and fair. For natural persons, it should be made absolutely clear that

are collecting, using, consulting or otherwise processing personal data

that concern them, as well as the extent to which said data is or will be processed. The

The principle of transparency requires that all information and communication regarding the

treatment of said data is easily accessible and easy to understand, and that it is

use simple and clear language. This principle refers in particular to the

information of the interested parties about the identity of the person in charge of the treatment and the

purposes of the same and to the added information to guarantee a fair treatment and transparent with respect to the affected natural persons and their right to obtain confirmation and communication of personal data concerning them that are treatment object. (...) In particular, the specific purposes of the treatment of the personal data must be explicit and legitimate, and must be determined in the time of collection. (...)”

The infringement of article 5.1.b) of the RGPD is typified in the article 83.5 of Regulation (EU) 679/2016 which, under the heading "General conditions for the imposition of administrative fines", states:

"5. Violations of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of 20,000,000 Eur or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) The basic principles for the treatment, including the conditions for the consent under articles 5,6,7 and 9.”

The LOPDGDD, for prescription purposes, qualifies in article 72.1.a) of very serious infraction “The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679”

III

The agreement to initiate the disciplinary proceedings in question attributed to A.

ASNORTE an infringement of article 5.1.b) of the RGPD.

Conduct contrary to the principle of purpose limitation in which materialized the infringement of the RGPD attributed to the entity claimed was the treatment of the personal data of the claimant with a purpose other than that for the

which had facilitated them; treatment carried out by an employee of the respondent who had access to the data of the affected party as a means to fulfill the obligations professionals derived from the External Collaborator contract signed with ASNORTE.

From what the claimant stated, it is evident that the client of the insurance company Santa Lucía was her mother and that she assumed the responsibility of receiving the [www.aepd.es](http://www.aepd.es)

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information about the home insurance offer offered by the exclusive Agent of the company, ASNORTE.

There is no discrepancy between the parties on the reality of the unlawful conduct:

that there was a treatment of the personal data of the claimant with a purpose other than the one for which the claimant provided them and the respondent collected them. A

In this regard, we refer to the statements made by ASNORTE in its allegations to the agreement to initiate the file in which he states that he shares with this Agency that the treatment of the data of the claimant that is the object of valuation in this file is contrary to article 5.1.b, of the RGD.

The treatment of data contrary to the principle of limitation of the purpose of the treatment was carried out by Mr. B.B.B., a natural person through whom the entity acted. ASNORTE was obliged to guarantee that its collaborators external, for the correct development of their professional activity, will have the necessary training to adapt the processing of personal data of third parties to the obligations imposed by the regulations governing the right to protection of Personal data.

B. At this point, it should be remembered that our Administrative Law governs sanctioning the principle of culpability, which prevents imposing sanctions based on the strict liability of the alleged offender, so that the requirement of sanctioning responsibility presupposes the concurrence, as an essential requirement, of the subjective element of the offence.

The presence of the subjective element or guilt in a broad sense, comprehensive of the intent and negligence, as a condition for the sanctioning responsibility to be origine has been recognized by the Constitutional Court, among others, in STC 76/1999, in which he affirms that the administrative sanctions participate in the same nature that the criminal ones, being one of the manifestations of the ius puniendi of the State, and that, as a requirement derived from the principles of legal certainty and criminal legality enshrined in articles 9.3 and 25.1 of the CE, its existence is essential for impose them.

In turn, Law 40/2015 on the Legal Regime of the Public Sector provides in the article 28, under the heading "Responsibility", "1. They can only be penalized for 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."

The question is, therefore, if ASNORTE, considering the circumstances of the case, exercised due diligence to ensure that its employees (or external collaborators) - who access data from third parties in compliance with the obligations imposed by the commercial contract that links them with the entity- observe the provisions that regulate the fundamental right to the protection of data.

They are illustrative of the diligence to be observed in complying with the rules of



numerous data protection Judgments, among which we can mention the SAN of

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04/26/2002 (Rec. 895/2009) which states: “In effect, it cannot be affirmed the existence of

culpability from the result and this is what the Agency does by maintaining that by not

having prevented the security measures the result is fault. Far from it

What must be done and is missing in the Resolution is to analyze the sufficiency of

the measures from the parameters of average diligence required in the market of

data traffic. Well, if you work with full diligence, scrupulously fulfilling

the duties derived from a diligent act, it is not possible to affirm or presume the

existence of any guilt.” (The underlining is from the AEPD)

Enlightening is also the SAN of 04/29/2010 that, in its Basis

Juridical sixth, regarding a fraudulent hiring, indicated that “The question does not

is to elucidate whether the appellant processed the personal data of the complainant without

your consent, such as whether or not you used reasonable care in trying to

identify the person with whom the contract was signed. (The underlining is from the AEPD)

The SAN of 05/30/2015 (Rec. 163/2014) highlights the differences that exist

between the attribution of liability to a natural person and a legal person and

connects the "reproachability" of a certain conduct to a "legal person" with

the circumstance that it “had or had not provided effective protection to the good

legal protected by the norm”. The Second Legal Basis of the Judgment

He says:

<<However, the mode of attribution of responsibility to people

legal does not correspond to the forms of fraudulent or reckless guilt that  
They are attributable to human behavior. So, in the case of violations  
committed by legal persons, although the element of  
guilt, it is necessarily applied differently from the way it is applied with respect to  
to natural persons. According to STC 246/1999 "(...) this construction, different from the  
imputability of the authorship of the infraction to the legal person arises from the  
nature of legal fiction to which these subjects respond. missing in them  
volitional element in the strict sense, but not the ability to break the rules to the  
that they are subjected. Capacity for infringement and, therefore, direct blame that  
derives from the legal right protected by the norm that is violated and the need for  
said protection is really effective and for the risk that, consequently, must  
assume the legal entity that is subject to compliance with said rule">> (The  
underlined is from the AEPD)

The documentation provided by the respondent with their allegations to the settlement agreement  
beginning of the file proves that in the employee appointment contract  
external that Mr. B.B.B. signed with her assumed the commitment to "deal with  
diligence of the commercial activity entrusted" and not to develop that activity to the  
margin of the regulations that are applicable to the activity of mediation in the  
private insurance and reinsurance sector. (Second stipulation of the contract, paragraph  
penultimate)

In case there is any doubt about the scope of the commitments assumed by the  
external collaborator - for what Mr. B.B.B. is interested in here - the last paragraph of the  
second stipulation of the contract says: "Between the regulations to which  
circumscribing the activity of the collaborator is that related (...) with the regulations of  
protection of personal data, with that corresponding to money laundering

capitals, (...)" (The underlining is from the AEPD)

It is an exponent of the diligence shown by ASNORTE in complying with the obligations that the RGPD imposes on third-party data protection certificate provided with their allegations to the accrediting start agreement of the Initial Training received by your external collaborator Mr. B.B.B. According to the document the aforementioned collaborator had successfully completed the theoretical/practical course of 50 teaching hours whose first module has as content the data protection of personal character, and among other issues related to it deals with the General provisions on data protection and the rights of individuals.

Another example of the diligence shown by ASNORTE is the circumstance that months later, coinciding with the date of effective application of the RGPD, provided to its external collaborators -for what Mr. B.B.B. is interested in here- a brief but specific training ("training pills") related to the new framework legal protection of personal data. We refer to the Certificate in which it is known that Mr. B.B.B. completed the online course on the GDPR on date 05/25/2018.

The specific training in data protection that ASNORTE ensured that he received Mr. B.B.B. coupled with the commitments he made, when signs the collaboration contract, to act with diligence in the commercial activity entrusted informing him that among those norms that he is obliged to comply with are the related to data protection, are an exponent of the diligence displayed by the ASNORTE entity. It is also worth mentioning that the training action

specific to the GDPR took place on the same day of effective application of the Regulation (EU) 2016/679, on 05/25/2018.

It is worth adding to the above other extremes that are also relevant for the purposes of assess the diligence of the defendant in a case such as the one at hand in which one of its external collaborators, Mr. B.B.B., processed the personal data of the claimant for a purpose other than that for which he had provided them to the claimed. On the one hand, to the letter signed by Mr. B.B.B. addressed to ASNORTE, of date 01/30/2019, in which it requests the resolution of the contract signed between both with effects 01/31/2019. It should be noted that the resolution letter is only a few days after the response from SANTA LUCÍA SEGUROS to the request informative of the data inspection and prior to the opening of the agreement to start the sanction file. On the other hand, it has informed that, with the purpose of reinforcing the training of its employees and collaborators, will be included in the contracts of external collaboration the following stipulation: "Confidentiality and limitation of the treatment purpose.

Data protection regulations require that personal data be treated always guaranteeing their confidentiality and only in according to the purposes (reasons) for which people have provided them (principle of purpose limitation).

C. - The respondent has argued in defense of her claim to archive the file that Mr. B.B.B. processed the personal data of the claimant "through your personal or private profile opened on said social network and, therefore, in a [www.aepd.es](http://www.aepd.es)

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exclusively personal or domestic and, absolutely outside the activity professional that... developed for ASNORTE". For that reason, he says, it results from everything impossible point that the friend request that D. B.B.B. sent to the claimant accrues from the relationship developed between this person and ASNORTE. The truth is, however, that ASNORTE's external collaborator Mr. B.B.B. that processed the personal data of the claimant for a purpose other than that for which he had provided them had access to them within the framework of the relationship professional that linked him with ASNORTE. Therefore, this circumstance is not relevant to determine whether or not the defendant is responsible for the action contrary to the GDPR.

The requirement of sanctioning liability to that claimed for the conduct analyzed depends only on the concurrence or not on your part of the diligence that was appropriate, considering the circumstances of the case.

The documentation in the file shows that ASNORTE acted with reasonable diligence and took such steps as seemed sufficient to ensure that its external collaborators - who access the data of third parties collected by the entity or that work in its records- were aware of the specific regulations of data protection and the obligations derived from it.

Thus, since the subjective element in ASNORTE's actions is absent of the infraction, no sanctioning responsibility is derived from the facts that are submitted to the assessment of this body, which requires agreeing the file of the this sanctioning file.

Therefore, in accordance with the applicable legislation,  
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: AGREE TO FILE the sanctioning file opened to the entity

ASNORTE, S.A., with NIF A79259362, in accordance with article 89.1.d) of the LPACAP.

SECOND: NOTIFY this resolution to ASNORTE, S.A.

THIRD: 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

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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

Sea Spain Marti

Director of the Spanish Data Protection Agency

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