 File No.: EXP202202951

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

to the following

BACKGROUND

FIRST: On October 28, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against FORMAESTUDIO,

C.B. (hereinafter, the claimed party), through the transcribed Agreement:

<<

File No.: EXP202202951

AGREEMENT TO START THE SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and based on

the following

FIRST: A.A.A. (hereinafter, the claimant) on 02/06/2022, filed

claim before the Spanish Data Protection Agency. The claim is directed

against FORMAESTUDIO, C.B. (EUROPEAN SCHOOL) with NIF E33551565 (hereinafter, the

claimed party). The reasons on which the claim is based are the following:

On 01/17/2022, to carry out the internships of the teacher's master's degree that is taking place

do, they required him to submit a questionnaire in which he had to fill in various data, one of which was

of them the one for COVID responsibility, having to indicate if she was vaccinated and present the pa-

COVID passport to confirm it, which he refused, so they told him that if he did not give

those data could not carry out the practices.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5/12, of

Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD),

Said claim was forwarded to the claimed party, so that they could proceed with their analysis and

inform this Agency within a month of the actions carried out to

adapt to the requirements set forth in the data protection regulations.

The transfer, which was carried out in accordance with the rules established in Law 39/2015, of 10/1,

of the Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), was collected on 02/17/2022 as stated in the acknowledgment of receipt that works in

The file.

On 04/14/2022, this Agency received a written response indicating:

1) The defendant has signed a cooperation agreement with UNIVERDIDAD ALFONSO

X EL SABIO, in which the claimant was studying a master's degree in secondary school

estuary.

Attach in document 1, the copy of the "educational cooperation" agreement, which contains

the one claimed, referred to as Center, and:

- In the "expose", number "three": The University "is interested in using the media

human and material resources of the Center for the teaching provided for in the Study Plan of the

Degree courses, Master's Studies of the UAX and the teachings of the course regulated by the

Order EDU/2645/2011, called Master's Degree in Education Teachers

Compulsory Secondary and Baccalaureate, Vocational Training, for internships

external curricular and extracurricular."

-Current regulations are cited that regulate the external academic practices of the

university students, and it is stipulated that the Center will allow students of the

University carry out external practices, indicating the facilities of the claimed,

making the University financial compensation to the Center for carrying out the

practices.

-It is indicated that: "University students who carry out their internships at the Center have

They must submit to the rules of operation and discipline of the latter, in addition to those that have

ga established that one. The Center will inform interns about the regulations

safety and occupational risk prevention.

Eventual conflicts arising in the development of practices will be resolved within

of a mixed joint commission, whose members will be appointed for this purpose by the parties

signatories of this agreement

There is also the tenth stipulation, which indicates:

"For the purposes of the provisions of Organic Law 3/2018, of 5/12, on Data Protection

Personal and guarantee of digital rights, Regulation (EU) 2016/679, of the

European Parliament and of the Council, of 04/27/2016 and complementary legislation, the parties

signatories undertake to comply with their obligation to protect, guard and secrecy

of the personal data that are used for the purpose of this agreement, and

adopt the necessary measures to avoid its alteration, loss, dissemination or unauthorized access.

authorized."

2) State the claimant:

a) "it is the University directly with the student and without the intervention" of the defendant, "the one that

Manages the pertinent administrative procedures prior to carrying out the internships in

our educational center.

b) "The student is informed by the University, as the data controller, of the con-

contractual conditions and privacy policies in the processing of your personal data

under the terms of the data protection law and digital rights and guarantees. Just one

Once the internship application has been submitted to our educational center by the student before the University

This is when the latter transfers the applicant's file to us, including in it
the personal data strictly necessary for the provision of internship services
in our center."

Also, once the request has been made, the student contacts directly with our
entity, and it is when, if necessary, certain necessary data is requested
to be able to complete the internal internship student form of our center. In concrete-
All the data requested from the student are the following: time availability, name, appe-
llidos and contact telephone number. It should be noted that as a general rule at no time
health data is requested from students. The entity FORMA ESTUDIO CB "has the
Informative clauses of rights for the processing of personal data for the interested parties
two that provide personal data to our entity."

"It is at the time of subscription of the student file, therefore, when my represented
proceeds to the request for personal data from the students, and it is at that moment and this time
correctly, when it makes available to them, the informative clauses of the pos-
privacy policies related to the processing of your personal data in the terms provided
by the law; requesting at that time the signature of the interested parties for the consents
formed". It accompanies DOCUMENT No. 2. The format in which it is presented is as part of
of a report from a legal firm entitled "report on compliance with the duty to inform"
information on data collection", of the defendant, of 04/13/2022, and in its introduction it indicates
that the purpose of the report is to "regularize the means and processes of data collection used
two for the claim against the data protection regulations". There is, among others, the reference

to the document: “EPIDEMIOLOGICAL CONTROL CLAUSE (STUDENTS IN PRACTICE)
CASES OF THIRD CENTERS”. In it, it is indicated that the "personal data included
health data" will be collected and stored in files, with the purpose of carrying out a
epidemiological control. Informs that the legal basis for treatment is consent and
that by signing the document "you consent to the processing of health data". "They will deal with
personal data contained in this document, in addition, to comply with
compliance with the pertinent legal obligations”. "Personal data will be kept
data until they are no longer necessary or relevant for the purpose for which they are
were collected or registered in our files, or at the latest until 02/1/2022. Pos-
Subsequently, the personal data that meet this condition will be deleted.

However, it presents another informative form in which it indicates for the same purpose and
collective, "students who carry out curricular internships from third-party centers", which the basis for
the treatment of your personal data is the vital interest.

c) On 12/2/2021, the claimant contacted via email requesting information about the ho-
and the start of the internship was set on 01/17/2022, the date on which he appeared in
the center to proceed to the beginning of the practices in person.

"At that time the entire country and specifically the Principality of Asturias was in a
situation of alarming increase in COVID cases; adopting extraordinary measures
rias for the containment of said situation.”

“On 01/5/2022, Code. 2022-00115, the PRINCIPAL DEPARTMENT OF EDUCATION
DO DE ASTURIAS, after assessing the epidemiological situation caused by the increase
alarming of the cases of COVID and care pressure in the principality of Asturias carried out
on 12/21/2021, and in accordance with article 6 of Law 2/2021 of 03/29, on urgent measures
prevention, containment and coordination measures to deal with the health crisis caused
by COVID 19, modified by Royal Decree Law 30/2021 of 12/23; adopted a resolution directed
given to the educational centers of the Principality for the urgent adoption of extraordinary measures

rias for the 2021-2022 academic year. Through said resolution, educational centers were urged to adapt their contingency plans in accordance with said resolution. specifically and within of the measures contemplated in the annex to the resolution adopted the need to reduce restrict access to educational centers, only exceptionally allowing access for the "carrying out complementary and extracurricular activities, as well as for carrying out of practices, with the COVID measures in force in each sector" Likewise, it was imposed on the educational centers the precautionary principle by virtue of which the educational community should extreme precautions to prevent the spread of the virus in the classroom, urging schools educational institutes to adopt all kinds of measures in that direction."

Thus, the aforementioned resolution affirmed "as long as the current crisis situation continues caused by the COVID-19 pandemic, the educational community must develop their activities, of any kind, in accordance with the precautionary principle in order to prevent une the generation of unnecessary risks to themselves or others and to avoid the spread tion of the virus causing the pandemic. "In this context of complete exceptionality (the center had several students and teachers with COVID) and after receiving the communication by the Ministry of Education, on 01/17/2022 the completely exceptional measure was decided to ask the applicant internship", the claimant, "to state in the moment of formalizing your incorporation in our center and for carrying out the practices if you had a CURRENT VACCINATION CERTIFICATE or if you did not have of him a PCR or NEGATIVE ANTIGEN TEST."

"The claimant did not provide personal data to our center, much less exhibited any

some type of certificate; but after several disagreements regarding the schedules of the master

decided not to formalize their registration in our center. Consent was not obtained

of the interested party to the processing of health data because no data was provided

. ”

4) On the legal basis of the treatment, it indicates that "at no time does it perform

of data” “the claimant did not come to make any allegation in this regard”. “The request to the re-

clamoring was a completely exceptional measure taken at a time of total exception.

tionality.”

"at no time was the delivery and preservation of any document intended" "The claim-

mante did not provide any personal data, deciding not to formalize their registration in

our center due to compatibility problems with their schedules.”

Regarding the legal basis for the legality of the processing of personal data, the

following:

- CONSENT (art 6.1 a) RGPD "the interested party gave his consent for the treatment-

processing of your personal data for one or more specific purposes” The consent for

In addition, it complies with the requirements of article 7 GDPR (as can be seen from the informative clauses).

vas provided), “consent otherwise granted within the framework of a contractual relationship

tual with the interested party.”

- VITAL INTERESTS OF THE INTERESTED PARTY OR ANOTHER INDIVIDUAL (art 6.1 d) GDPR "

the processing is necessary to protect vital interests of the data subject or of another natural person

sica”.

- PUBLIC INTEREST (art 6.1 e) RGPD "the treatment is necessary for the fulfillment of

a mission carried out in the public interest or in the exercise of public powers vested in the

responsible for the treatment”.

Recital 46 of the GDPR already recognizes that, in exceptional situations, such as an epi-

epidemic, the legal basis of the treatments can be multiple, based on both the public interest and

public, as in the vital interest of the interested party or another natural person."

"Regarding the circumstances that lift the prohibition of data processing of

health, we understand:

Letter a) art 9.2 GDPR: "Section 1 shall not apply when one of the circumstances occurs:

following circumstances: the interested party gave his explicit consent for the treatment of different

such personal data for one or more of the specified purposes.

"Letter c) 9.2 GDPR: "The treatment is necessary to protect vital interests of the interested party

or of another physical person".

Letter g) 9.2 GDPR "The processing is necessary for reasons of essential public interest,

on a Union or Member State basis, which should be proportional to the objective

persecuted, essentially respect the right to data protection and establish measures

adequate and specific to protect the interests and fundamental rights of the interested party.

do"

Regarding the purpose of the treatment, the information requested was solely for the purpose of

prevent the spread and contagion of COVID among the workers and students of the center.

"The data protection regulations itself establishes that in emergency situations for

the protection of essential public health and/or vital interests of natural persons, possibly

The necessary health data will be processed to prevent the spread of the disease that

has caused the health emergency."

- The Fourth Chamber of the Supreme Court in judgment of 12/1/2021 No. 1412/2021 has also

pronounced on the nature of this measure and its adequacy to the law of protection of

Data: (in the framework of the challenge to the extraordinary measure of adoption of the passport COVID in the autonomous community of the Basque Country to access establishments identified in the order of the Minister of Health of the Government of the Basque Country of 11/16/2021).

5) “The exceptional measure of asking the claimant to state if she was vaccinated or Otherwise, if the COVID card or PCR test or antigens had been displayed, understand- demos complies with the requirements of art 5 GDPR; and especially the principle of minimization of data".

The information requested was solely for the purpose of preventing the spread and contagion of the virus. COVID among the workers and students of the center”.

"It did not intend to collect such data, but simply requested the mere verification of that the trainee student was not a potential risk for the rest of the students and teachers anything from the center He only intended to request the display of the document (never its delivery to conservation) so we understand that it was a measure that, if it had materialized, The treatment was adequate, pertinent and suitable for the purpose it was intended to fulfill. plir.”

6) Prior to making the decision to request the health data, an evaluation of the impact. Attached as document 3, which includes:

a) Report made on 01/14/2022, by the same firm that made the report on the clauses. informative sheets of the treatments that the defendant carries out.

b) Regarding treatment data: "epidemiological control" of COVID 19 among workers-

res and students of the center, the purpose is indicated:

“Avoid the spread and contagion of COVID 19 among the workers and students of the center.

Apply the measures recommended by the Principality of Asturias in terms of education re-

related to COVID 19.

Avoid the closure of the classrooms and the consequent loss that this entails for the students of the forma-

hired mation.

The legal basis of the treatment consists of: consent of users, vital interest and public interest.

public, in the category of interested parties: "Students who carry out curricular internships for third parties

centers”, “there are no other recipients”, although the name of the treatment includes the students

us and workers.

“Storage period: Exceptional measure to control the epidemiological situation derived from

day of the sixth wave. The treatment of data, in no case, can be carried out beyond the day

02/1/2022.”

c) In the bases of the treatment, it appears that the person to whom the data is collected is “the student of a third

cer educational center that carries out the curricular practices of the contracted studies.“

d) In case of use, there is an information flow diagram referring to communication of con-

close contact with students or workers, although in the list of "operations related to

for treatment purposes", figure that "contact tracing" does not apply. "employee control"

does not apply, in categories of interested parties, the reference to students does not appear, and it states “em-

employees”, with not applicable. In treatment factors, all of them state "does not apply, appearing in-

among others, “web services”, automated treatments does not apply”. In "Side Effects of

treatment", figure: "exceeds expectations of the interested party", with applies and high probability,

“mitigated”, “possible significant non-material damage, applies, low probability, “not mitigated”.

In conclusions and recommendations it appears: "It is also worth noting the role of the interested party,

being a student from a third center who accesses the educational center of the person in charge of the

treatment for the realization of curricular practices. It should also be noted that the data

health should only be displayed and that, in case of providing the data in a non-automated format,

do, this will be destroyed and transferred only the information to comply with the COVID measures of

automated, pseudonymised and encrypted manner on a single device, in addition to copying

of security in the pendrive described."

7) It adds that it is not necessary to adopt any measure to avoid new incidents in re-

relation to said treatment because once the exceptionality of the moment ended, he stopped requesting

I know any health data

THIRD: On 05/6/2022, in accordance with article 65 of the LOPDGDD, the

admitted for processing the claim presented by the claimant.

FUNDAMENTALS OF LAW

Yo

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

General Data Protection, hereinafter GDPR), grants each control authority and

according to what is established in articles 47, 48.1, 64.2 and 68.1 of Organic Law 3/2018, of 5 December

December, Protection of Personal Data and guarantee of digital rights (in

hereafter, LOPDGDD), the Director is competent to initiate and resolve this procedure

of the Spanish Data Protection Agency.

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

by the Spanish Data Protection Agency will be governed by the provisions of the Regulation

(UE) 2016/679, in this organic law, by the regulatory provisions issued in

their development and, as long as they do not contradict them, on a subsidiary basis, by the rules

General on administrative procedures.

II

Article 4 of the GDPR defines:

“For the purposes of this Regulation, the following shall be understood as:

1) personal data: any information about an identified or identifiable natural person ("the

interested"); An identifiable natural person shall be considered any person whose identity can be

be determined, directly or indirectly, in particular by means of an identifier, such as by

example a name, an identification number, location data, an identifier in

line or one or several elements proper to physical, physiological, genetic, psychological,

economic, cultural or social of said person;

2) processing: any operation or set of operations performed on data

personal data or sets of personal data, whether by automated procedures or not,

such as the collection, registration, organization, structuring, conservation, adaptation or

modification, extraction, consultation, use, communication by transmission, diffusion or

any other form of authorization of access, comparison or interconnection, limitation, deletion or

destruction;

15) data relating to health: personal data relating to the physical or mental health of a

natural person, including the provision of health care services, revealing

information about your state of health;”

The processing of personal data in situations of health emergency continues to feel

do applicable the personal data protection regulations (RGPD and LOPDGDD), for which

all its principles are applied, contained in article 5 of the GDPR, and among them the treatment

processing of personal data with legality, loyalty and transparency, limitation of the finalization

principle of limitation of the conservation period, and of course, and special care must be taken

Special emphasis on it, the principle of data minimization. On the other hand, they detach

some powers derived from the exercise of specific rights that deal with the transparency

reference and information contained in articles 12 and 13 of the GDPR.

In addition, it must be taken into account that the specific purpose related to the preservation

of health poses different risks to the rights and freedoms of those affected.

In the situation of health crisis caused by COVID19, the defendant adopts measures

aimed at preventing new infections of COVID-19, to enable the development of

training practices in your center, under the consideration of a regulation of the Principality of

Asturias in the educational area aimed at prevention, containment and coordination, necessary

to face the health crisis caused by COVID-19, which included different mo-

dalities such as the reduction of accesses in the framework of contingency plans, without

On the other hand, it appears that the obligation to vaccinate or test was imposed.

Unlike the situation posed by the defendant, regarding the facts that the Supreme Court assessed in the

Basque Country, that if it imposed the obligation to contribute the

COVID certificate or health passport provided for in Regulation EU 2021/953 of the

European Parliament and of the Council, of 06/14/2021, regarding a framework for the issuance,

verification and acceptance of interoperable COVID-19 certificates of vaccination, proof

diagnosis and recovery (EU digital COVID certificate) in certain establishments,

it should be noted that what the TS decides is on the ratification of a normative provision

of a public authority, Ministry of Health, with competence in the matter. Specific

decided whether the measure consisting of requiring the display of the digital COVID Certificate of the

European Union in the areas described in the Order, when the conditions are met

provided and in the manner provided, is susceptible to judicial authorization for having

sufficiently accredited the requirements of necessity and suitability, in accordance with the
standard established by the Supreme Court Judgments of 08/18 and 09/14/2021, and
pronounced that it presented the characteristics of adequacy, necessity and proportionality that
justify their adoption by virtue of articles 3 of the Organic Law 3/1986, 26 of the Law
14/1986 and 54 of Law 33/2011, interpreted in light of articles 15 and 43 of the
Constitution. In other words, it pronounces itself on a measure deployed by certain powers
legally established by an entity with competence to establish them, based on
that does not have the one claimed when citing the Order of the Ministry of Education of the Principality of
01/5/2022, which does not foresee that tests or certificates of
vaccination.

The defendant indicates, after acknowledging that she demanded the health data of the claimant, that she did not re-
finally took the same and there is therefore no treatment, secondarily to reinforce his
thesis that the data was only displayed.

However, it provides informative clauses on the aforementioned treatment "epidemic control clause"
myological- students in practices of third centers" in which it appears that data is collected
health, which also appears in the reference in the impact evaluation, performs the treatment.
ment: "epidemiological control" of COVID 19 among the workers and students of the center,
with the purpose: “Avoid the spread and contagion of COVID 19 among workers and students.
from the center, and the data is collected: "to the student of a third educational center who
za the curricular practices of the contracted studies.", points out that "in case of providing the
data in non-automated format, it will be destroyed and transferred only the information of
comply with COVID measures in an automated and pseudonymized and encrypted manner in a
only device, in addition to the backup copy on the flash drive described.”

Everything indicates that the collection, storage and use of this data takes place and it was so
arranged and approved in its measures, all, treatment operations that suppose that the

claimed performs personal data processing in this case with health data on the

that in principle there would have to be a lawful cause of treatment and one of the causes that

The specific treatment of these health data is limited.

II

The GDPR establishes a very broad concept of health data, and gives it a regime

specific, corresponding to the so-called "special categories of data"

The European Data Protection Committee (former Article 29 Working Group) in its

Opinion on Guidelines on automated individual decisions and elaboration of

profiles for the purposes of Regulation 2016/679, adopted on 10/3/2017, confirms that for

treat special categories of data, coverage must be found in article 9.2 GDPR, and

once the general prohibition has been excepted, it is necessary to resort to the assumptions of article 6

GDPR to give legality to the treatment in question. "(...) Those responsible for the treatment only

may process special category personal data if one of the conditions is met

provided for in article 9, paragraph 2, as well as a condition of article 6.(…).", therefore, the

Data controllers should be aware of the need to comply with both

requirements for processing these special categories of personal data.

According to paragraph 1 of art. 9 GDPR, the processing of personal data that

reveal political opinions, in the same way that data processing is

personal information that reveals ethnic or racial origin, religious or philosophical convictions, or

union affiliation and the processing of genetic data, biometric data aimed at identifying

unequivocally to a natural person, data relating to health or data relating to life

sexuality or sexual orientation of a natural person. However, section 2 of the same

This precept authorizes the processing of all such data when any of the ten circumstances provided therein [letters a) to j)]. Some of these circumstances have a scope of limited application (labor, social, associative, health, judicial, etc.) or respond to a specific purpose, therefore, in themselves, delimit the specific treatments that authorized as an exception to the general rule. In addition, the enabling efficacy of several of the cases provided therein is subject to the fact that the Law of the Union or that of the States members provide for and regulate them expressly within their sphere of competence: this is the case of the circumstances listed in letters a), b), g), h), i) and j). Treatment of categories special personal data is one of the areas in which expressly the GDPR has granted Member States "room for manoeuvre" when it comes to "specifying its rules", as described in its recital 10. This margin of legislative configuration extends both to the determination of the enabling causes for data processing specially protected personal data - that is, to the identification of the purposes of interest essential public and the appreciation of the proportionality of treatment to the purpose pursued, essentially respecting the right to data protection - such as the establishment of "adequate and specific measures to protect the interests and fundamental rights of the interested party" [art. 9.2 g) GDPR]. The Regulation therefore contains a specific obligation to Member States to establish such guarantees, in the event that they authorize to treat the specially protected personal data.

Order SND/344/2020, of 04/13, which establishes exceptional measures for the reinforcement of the National Health System and containment of the health crisis caused by the COVID-19, agrees both to make it available to the health authority of each Community

Autonomous of all diagnostic health centers, services and establishments

privately owned clinic located in them, such as the submission of the performance of

diagnostic tests for the detection of COVID-19 to the guidelines, instructions and

criteria agreed upon for this purpose by the regional health authority,

The second foundation of the aforementioned Order determines: "Requirements for carrying out

diagnostic tests for the detection of COVID-19.”: The indication for performing

diagnostic tests for the detection of COVID-19 must be prescribed by a doctor

in accordance with the guidelines, instructions and criteria agreed for this purpose by the authority

competent health.”

"As indicated in the preamble of this rule, it is a question of limiting the realization

of diagnostic tests for the detection of COVID-19 to those cases in which

there is a prior prescription by a physician and they comply with criteria established by the

competent health authority, thus submitting the regime for carrying out this

class of tests to the prior existence of medical criteria that advise its performance.”

Point out article 9 of the GDPR:

"1. The processing of personal data that reveals ethnic or racial origin,

political opinions, religious or philosophical convictions, or trade union membership, and

treatment of genetic data, biometric data aimed at uniquely identifying

a natural person, data relating to health or data relating to sexual life or orientation

of a natural person.”

2. Section 1 shall not apply when one of the following circumstances occurs:

“a) the interested party gave their explicit consent for the processing of said personal data.

for one or more of the specified purposes, except where the law of the Union or of the

Member States provide that the prohibition referred to in paragraph 1 cannot be

raised by the interested party;

[…]”

c) the processing is necessary to protect vital interests of the data subject or of another person

physically, in the event that the interested party is not able, physically or legally, to give

Your consent;

[…]”

g) the processing is necessary for reasons of essential public interest, on the basis of the

Law of the Union or of the Member States, which must be proportional to the objective pursued.

followed, essentially respect the right to data protection and establish additional measures

adequate and specific to protect the interests and fundamental rights of the interested party;

[…]”

i) the processing is necessary for reasons of public interest in the field of public health,

such as protection against serious cross-border threats to health, or to ensure

high levels of quality and safety of health care and medicines or

medical devices, on the basis of Union or Member State law that

establish adequate and specific measures to protect the rights and freedoms of the

protected, in particular professional secrecy"

The defendant does not report the circumstances that it considers lift the prohibition of treatment.

of health data in the informative clause, although it states that the following would be applicable:

-art 9.2.a) of the GDPR, "the interested party gave his explicit consent for the treatment of

such personal data for one or more of the specified purposes, except where the

Law of the Union or of the Member States establishes that the prohibition mentioned in

section 1 cannot be lifted by the interested party;" The recourse to consent must

be limited to cases in which the interested party has genuine freedom of choice and therefore

is subsequently able to withdraw consent without suffering any harm. Furthermore, in

In this case, the dependency of the student internship on the organization in which she does it

supposes a position of subjection in which the claimant will not feel free not to provide

said consent and that brings the consequence that it is not admitted to the practices

-art 9.2.c) of the GDPR, "the processing is necessary to protect the vital interests of the

interested party or another natural person, in the event that the interested party is not qualified,

physically or legally, to give their consent;". In addition to not knowing if the same

immunization certification requirements were enforceable if other employees and students, were

Appreciates at first glance that it does not comply with the literal that conditions the application.

-art. 9.2 g) of the GDPR "The treatment is necessary for reasons of an essential public interest,

on a Union or Member State basis, which should be proportional to the objective

persecuted, essentially respect the right to data protection and establish measures

adequate and specific to protect the interests and fundamental rights of the interested party.

do". The supposed basis that should specify the aforementioned interest adjusted to the

educational field in which the authorization to request personal data is specifically provided for.

health in relation to COVID 19

Thus, it is considered that the defendant does not meet the requirement that it alleges as an exception to the

treatment of health data, considering that it violates article 9.2.) of the GDPR.

It must also be analyzed whether the treatment object of the claim meets any of the

legal basis provided in article 6 of the GDPR, as a requirement for its legality:

IV.

Article 6.1 of the GDPR, establishes the assumptions that allow the treatment to be considered lawful

of personal data.

1. Processing will only be lawful if at least one of the following conditions is met:

a) the interested party gave his consent for the processing of his personal data for one or

various specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is a party;

or for the application at his request of pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the res-

responsible for the treatment;

d) the processing is necessary to protect vital interests of the data subject or of another person

physical;

e) the processing is necessary for the fulfillment of a task carried out in the public interest

or in the exercise of public powers conferred on the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the user.

responsible for the treatment or by a third party, provided that such interests do not prevail.

with the interests or the fundamental rights and freedoms of the interested party that require the

protection of personal data, in particular when the data subject is a child.

The provisions of letter f) of the first paragraph shall not apply to the treatment carried out

by public authorities in the exercise of their functions

The defendant indicates in the informative clause, that it would concur:

-6.1 a) of the GDPR, and "in addition, to comply with the relevant legal obligations"

that does not identify unless it refers to the Resolution of 01/05/2022, of the Ministry of

Education, whereby the instructions for use are adapted to epidemiological evolution.

organization, prevention, containment and coordination necessary to face the crisis

health caused by COVID-19 in the educational field for the 2021-2022 school year

of application to non-university educational centers of the Principality of Asturias, Bulletin of the

12, in which there is no reference to vaccination or diagnostic tests for the infection.

Regarding consent, it is worth noting something similar to what has been mentioned to raise

the prohibition of treatment.

-In another form, not knowing if one or the other or both are delivered to be

completed, indicates as legitimating basis, exclusively "vital interest" included in the

point d) of article 6 of the GDPR: “the processing is necessary to protect vital interests

of the interested party or of another natural person”

The vital interest in data processing covers situations in which the processing is

necessary to protect an interest essential to the life of the data subject or that of another person

physical, and will only occur in certain cases, and in principle, the person responsible for the treatment

can only be based on grounds of vital interest if no other legal basis is available for the

treatment. In any case, here I would assume that with the same purpose, the rest of the people

related to the education of the center, whether students, whether employed as

teachers, and managers who deal with these people, should be subjected to the same treatment,

requiring all said health data, since it is not a matter of a predominant interest

about another. Therefore , it is not proven that there is evidence that the treatment is necessary .

it is to protect vital interest, in this case, with respect to the claimant.

Of the legitimation bases that are reported in the information clauses, none

the said treatment.

However, if it is observed that the claimant consents to carrying out the practices in

an entity that collaborates with the University in which he studies and based on this, presents

a request to be able to carry them out in the claimed entity, being able to conclude that there

provide a relationship between the parties that would make it possible to deploy data processing based on

it.

V

In accordance with the evidence available in this act of processing of

agreement to start disciplinary proceedings, and without prejudice to what results from the

instruction, it is considered that the facts exposed could violate the provisions of the

Articles: 9.2 of the GDPR, with the scope expressed in the Fundamentals of Law

above, which, if confirmed, could imply the commission of the offense classified in the

article 83 section 5.a) of the GDPR that under the heading "General conditions for the

imposition of administrative fines" provides that:

Violations of the following provisions will be penalized, in accordance with section

2, with administrative fines of a maximum of 20,000,000 EUR or, in the case of a

company, of an amount equivalent to a maximum of 4% of the total annual turnover

of the previous financial year, opting for the highest amount:

a) the basic principles for treatment, including the conditions for consent

in accordance with articles 5, 6, 7 and 9;

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

acts and conduct referred to in sections 4, 5 and 6 of article 83 of the Regulation

(UE) 2016/679, as well as those that are contrary to this organic law".

For the purposes of the limitation period, article 72 of the LOPDGDD indicates:

"Infractions considered very serious.

"1. Based on what is established in 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:

[…]

e) The processing of personal data of the categories referred to in article 9 of the

Regulation (EU) 2016/679, without the occurrence of any of the circumstances provided for in said

precept and in article 9 of this organic law.

[…]

SAW

Sections d) and i) of article 58.2 of the GDPR provide the following:

"Each control authority will have all the following corrective powers indicated to

continuation: (…)

"d) order the person in charge or in charge of the treatment that the treatment operations are

conform to the provisions of this Regulation, where appropriate, of a given

manner and within a specified period;"

“i) impose an administrative fine in accordance with article 83, in addition to or instead of the

measures mentioned in this section, according to the circumstances of each case

particular;"

In this case, given the category of data collected and the risks of the rights and

liberties that are compromised with them, proceeds the sanctioning procedure of

administrative fine. The imposition of adjustment measures in the treatment is compatible with

the sanction consisting of an administrative fine, according to the provisions of art. 83.2 of the GDPR.

VII

The determination of the sanctions that should be imposed in the present case requires observing the provisions of articles 83.1) and 2) of the GDPR, precepts that, respectively, have the following:

"1. Each control authority will guarantee that the imposition of administrative fines with under this article for the infringements of this Regulation indicated in the paragraphs 4, 5 and 6 are in each individual case effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances of each case. individually, in addition to or in lieu of the measures contemplated in article 58, section 2, letters a) to h) and j). When deciding to impose an administrative fine and its amount in each individual case due account shall be taken of:

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 as the number of affected stakeholders and the level of damages they have suffered;

b) intentionality or negligence in the infraction;

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 data controller or processor, given account of the technical or organizational measures that they have applied under articles 25 and 32;

e) any previous infringement committed by the controller or processor; 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 if the Controller or processor notified the infringement and, if so, to what extent;

i) when the measures indicated in article 58, paragraph 2, have been ordered previously against the person in charge or the person in charge in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or certification mechanisms approved under 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 of the offence."

Within this section, the LOPDGDD contemplates in its article 76, entitled: "Sanctions and corrective measures":

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679 will be applied taking into account the graduation criteria established in the section 2 of said article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 also may be taken into account:

a) The continuing nature of the offence.

b) Linking the offender's activity with data processing personal.

c) The benefits obtained as a consequence of the commission of the infraction.

d) The possibility that the conduct of the affected party could have led to the commission of the infringement.

e) The existence of a merger process by absorption subsequent to the commission of the infraction,

that cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate.

h) Submission by the person responsible or in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which there are

disputes between those and any interested party.

3. It will be possible, complementary or alternatively, the adoption, when appropriate, of the

remaining corrective measures referred to in article 83.2 of Regulation (EU)

2016/679."

In accordance with the precepts transcribed, for the purpose of setting the amount of the fine to

impose in the present case typified in article 83.5.a) of the GDPR, of which

holds the defendant responsible, for the infringement of article 9 of the GDPR, it is estimated

concurrent as aggravating factors the following factors that reveal a greater

illegality and/or culpability in the conduct of the defendant:

-Article 83.2.g) GDPR: "the categories of personal data affected by the

infringement", as it is health data, with a specific regime cataloged as data of

special category due to the additional protection that their legal regime grants them, and that

They should only be processed for specific purposes and under special conditions.

With this factor, a penalty of 6,000 euros is deemed appropriate, without prejudice to what

results from the instruction.

Therefore, in accordance with the foregoing, by the Director of the Spanish Agency for

Data Protection,

HE REMEMBERS:

FIRST: INITIATE SANCTIONING PROCEDURE against FORMAESTUDIO, C.B., with NIF E33551565, for the alleged violation of article 9 of the GDPR, in accordance with article 83.5.a) of the GDPR and for the purposes of prescription in article 72.1.e hopefully) of the LOPDGDD.

SECOND: APPOINT as instructor B.B.B. and, as secretary, to C.C.C. indicating that any of them may be challenged, where appropriate, in accordance with the provisions of articles 23 and 24 of Law 40/2015, of 1/10, on the Legal Regime of the Public Sector (LRJSP).

THIRD: INCORPORATE into the disciplinary file, for evidentiary purposes, the claim filed by the claimant and its documentation, as well as the documents obtained and generated by the General Sub-directorate of Data Inspection.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1/10, of Common Administrative Procedure of Public Administrations, (hereinafter, LPACAP), the sanction that could correspond would be 6,000 euros, without prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to FORMAESTUDIO, C.B., with NIF E33551565, granting him a hearing period of ten business days to formulate the allegations and Submit any evidence you deem appropriate. In your pleadings you must Provide your NIF and the procedure number that appears in the heading of this document.

If, within the stipulated period, he does not make allegations to this initial agreement, it may be considered a resolution proposal, as established in article 64.2.f) of the LPACAP.

In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the period granted for the formulation of allegations to the present startup agreement; which will entail a reduction of 20% of the sanction that

appropriate to impose in this proceeding. With the application of this reduction, the sanction would be established at 4.8000 euros, resolving the procedure with the imposition of this sanction.

In the same way, it may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean the reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 4,800 euros, and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the sanction is cumulative to the one that corresponds to apply by acknowledgment of responsibility, provided that this acknowledgment of responsibility responsibility is revealed within the period granted to formulate allegations at the opening of the procedure. The voluntary payment of the amount referred to in paragraph above may be done at any time prior to the resolution. In this case, yes should both reductions be applied, the amount of the penalty would be established at 3,600 euro.

In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or waiver of any action or appeal in administrative proceedings against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts previously indicated 4,800 euros or 3,600 euros, you must make it effective through your deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Agency Spanish Data Protection Agency at the bank CAIXABANK, S.A., indicating in the

concept the reference number of the procedure that appears in the heading of this

document and the cause for reduction of the amount to which it benefits.

Likewise, you must send proof of income to the Sub-directorate General of Inspection

to continue with the procedure according to the amount entered.

The procedure will have a maximum duration of nine months from the date of

initiation agreement or, where applicable, the draft initiation agreement. After that period,

it will expire and, consequently, the file of actions; in accordance with

established in article 64 of the LOPDGDD.

Finally, it is noted that in accordance with the provisions of article 112.1 of the LPACAP, against

There is no administrative appeal for this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

935-110422

>>

SECOND: On November 5, 2022, the claimed party has proceeded to the

payment of the penalty in the amount of 3600 euros making use of the two reductions

provided for in the initiation Agreement transcribed above, which implies the

recognition of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to

the opening of the procedure, entails the waiver of any action or appeal via

against the sanction and acknowledgment of responsibility in relation to

the facts referred to in the Commencement Agreement.

FUNDAMENTALS OF LAW

Yo

Competence

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

Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (hereinafter, LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature but the

inadmissibility of the second, the voluntary payment by the presumed perpetrator, in

any moment prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least

20% of the amount of the proposed penalty, these being cumulative among themselves.

The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or resource against the sanction.

The percentage reduction provided for in this section may be increased

according to regulations."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202202951, in

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to FORMAESTUDIO, C.B..

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

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

Against this resolution, which puts an end to the administrative process as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation 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.

Mar Spain Marti

Director of the Spanish Data Protection Agency

936-040822

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es