

□ Procedure No.: PS/00231/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated February 2, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against UNIÓN SINDICAL OBRERA with NIF G28567402 (in  
later, the claimed one).

The reasons on which the claim is based are the sending by email of the census  
election for the union elections to be held on 02/26/2020, carried out by the  
trade union section of UNION SINDICAL OBRERA of your workplace.

The claimant considers that they must have their consent for this  
data processing, and he has not granted it. The shipment has been made, according to  
comments, to "affiliates and sympathizers of the union itself".

In the electoral census, which is provided, the following personal data is observed:

DNI, name and surnames, date of birth and date of seniority in the center.

Along with the claim, provide a copy of the email from USE  
accompanying electoral census.

SECOND: In view of the reported facts, on June 3, 2020, the

moved from the present claim to the claimed one stating that the treatment  
of the personal data of the provisional list of voters is found  
sufficiently legitimized in section 6.1.c of the RGPD, not needing  
consent of the interested party.

To substantiate said treatment, they cite arts. 16 and 26 of Law 9/1987 of 12

June, of Representative Bodies, Determination of Working Conditions and Participation of Personnel at the Service of Public Administrations, in connection with art. 14 of Royal Decree 1846/1994, of September 9, which approves the Regulation of elections to representative bodies of the personnel at the service of the General Administration of the State.

They are aware that there is no explicit obligation to send the census by mail electronic, treatment that could find accommodation in art. 6.1.f (interest legitimate).

Considers that the treatment object of this procedure does not cause any damage on the rights and freedoms of the affected party or claimant. The union believes that e-mail is the most appropriate means of disseminating the provisional list of voters, due to the relocation of part of the staff of the workplace, not they find the bulletin board sufficient to post the information.

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On the other hand, an adequate dissemination of the list is achieved through e-mail. of electors and its review by interested parties is facilitated, as well as the presentation of claims, with the ultimate goal of guaranteeing the exercise of their right to vote in the elections called (arts. 15 and 27 Law 9/1987).

They see it as ideal for the purpose it pursues, due to its simplicity and ability to spread between the recipients to whom the communication is directed; and, finally, proportional, given that the impact on the rights of the complainant, as they allege, is identical or very similar to the one produced by publishing the provisional list in the

job center bulletin board, since the categories of data involved and

Interested third parties with potential access to such information should be  
essence, the same.

Despite this, as measures to be adopted to avoid the incident, they mention the

review of internal protocols on communication and/or publication of data from

personal character in the framework of the holding of trade union elections, focusing

in: categories of data involved; legal bases that confer legitimacy

(legal obligation, contractual relationship, consent, legitimate interest); means to

employ and basic security measures to implement during the treatment of

data (automated and non-automated media). They also propose actions

specific training courses for staff at the service of the trade union organization, with the

objective of raising awareness and providing the necessary knowledge for the treatment

of data not only of affiliates or sympathizers, but of other owners. The topics

would be: publication of listings on the bulletin board, union elections and sending of

electronic communications.

Despite everything, the defendant does not consider that he is committing an offence, although he does

They plan to review the internal protocols on this matter, as regards

to published data, legal bases and means to use (they should not have it very clearly, if

they will review the protocols).

THIRD: On September 1, 2020, the Director of the Spanish Agency

of Data Protection agreed to initiate sanctioning procedure to the claimed, with

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged infringement of article 5.1.f) of the RGPD, typified in the

article 83.5 of the RGPD.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written

pleadings in which, in summary, it stated the following:

“Regarding the categories of data processed, it should be noted that there are no categories of specially protected data, or endowed with greater criticality, corresponding only to basic types of information (name, surnames, date of birth, national identity document and seniority).

On the other hand, the aforementioned categories of data, collected in the electoral census, are the specified in art. 14.1 of RD 1846/1994, regulations for the development of the Law 9/1987, of June 12, of Representative Bodies, Determination of the

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Working Conditions and Participation of Personnel in the Service of the Public Administrations, regulations in charge of regulating the call for elections to representative bodies in the field of public service.

In relation to the means used to communicate the electoral census data,

It should be noted that the use of electronic mail as a means of dissemination, although could be considered by the personnel in charge of the shipment a useful and practical means for the intended purpose (achieve adequate dissemination due to the existing relocation), constitutes an isolated event, without said procedure is provided for in the internal protocols of the claimed organization, nor represents the usual channel of notification for this type of calls.

Prior to the transfer of this complaint, the trade union organization already had drawn up a confidentiality agreement to make it available to the delegates of the trade union sections of the affected region, which is attached to the letter of

allegations.

In addition, in order to avoid the repetition of behaviors of these characteristics,

As well as to prevent them, the following measures have been taken:

- Prepare and send a circular to union delegates and sections, reiterating the GDPR principles and the guidelines to be respected in relation to data communication personal as a result of calls for union elections.
- Include a specific section on this casuistry in the next training to impart by the DPD before the end of this year (2020)."

FIFTH: On October 27, 2020, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigation actions, E/02282/2020, as well as the documents provided by the claimant.

SIXTH: On November 3, 2020, a resolution proposal was formulated, proposing that the defendant be sanctioned with a sanction of warning, for the infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD.

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

#### PROVEN FACTS

FIRST: The trade union section of UNION SINDICAL OBRERA sends by e-mail from the electoral roll of the claimant's place of work, such as consequence of the union elections held on February 26, 2020.

SECOND: The respondent has adopted measures to avoid the repetition of behaviors of these characteristics, as well as prevent them by preparing and sending a circular to union delegates and sections, indicating the principles of the RGPD and the guidelines to respect in relation to the communication of personal data as a result of calls

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union elections, including a specific section on this casuistry in the next training to be given by the DPD before the end of this year (2020).

## FOUNDATIONS OF LAW

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

Data Protection, in accordance with the provisions of art. 58.2 of the GDPR and in the art. 47 and 48.1 of LOPDGDD.

II

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

For its part, article 5 of the RGDPE establishes that personal data will be:

“a) processed in a lawful, loyal and transparent manner in relation to the interested party (“lawfulness, loyalty and transparency”);

b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, paragraph 1, the further processing of personal data for archiving purposes in public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes (“purpose limitation”);

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

d) accurate and, if necessary, updated; all measures will be taken reasonable to eliminate or rectify without delay the personal data that

are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) kept in a way that allows the identification of the interested parties during longer than necessary for the purposes of the processing of personal data; the Personal data may be kept for longer periods provided that it is processed exclusively for archival purposes in the public interest, research purposes scientific or historical or statistical purposes, in accordance with Article 89, paragraph 1, without prejudice to the application of the appropriate technical and organizational measures that This Regulation is imposed in order to protect the rights and freedoms of the interested party ("limitation of the retention period");

f) processed in such a way as to ensure adequate security of the data including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of technical measures or appropriate organizational ("integrity and confidentiality").

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

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III

In accordance with the evidence available at the present time, considers that the known facts, that is, the sending by email of the electoral census to "affiliates and sympathizers of the union itself", where the following personal data: ID, name and surname, date of birth and date of seniority in the center, supposes the violation of article 5.1 f) of the RGPD, which governs

the principles of integrity and confidentiality of personal data, as well as the proactive responsibility of the controller to demonstrate its compliance.

#### IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers in the event of an infraction of the precepts of the GDPR.

Article 58.2 of the RGPD provides the following:

“2 Each supervisory authority shall have all of the following corrective powers listed below:

(...)

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this Regulation;”

(...)

“d) order the person responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;”

“i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each particular case;”

Article 83.5.a) of the RGPD establishes that:

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 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;"

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In turn, article 72.1 a) of the LOPDGDD, under the heading "Infringements

considered very serious provides:

"Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

considered very serious and will prescribe after three years the infractions that suppose

a substantial violation of the articles mentioned therein and, in particular, the

following:

a) The processing of personal data violating the principles and guarantees established

two in article 5 of Regulation (EU) 2016/679."

This infraction could be sanctioned with a warning, in accordance with article

58.2.b) of the RGPD, when collecting through said form basic data of the

users and consider that the administrative fine that could fall in accordance with the

provided in article 83.5.a) of the RGPD would constitute a disproportionate burden

for the claimed, whose main activity is not directly linked to the

processing of personal data, since there is no record of the commission of any infringement

above regarding data protection.

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On the other hand, article 83.7 of the RGPD provides that, without prejudice to the

corrective powers of the control authorities under art. 58, paragraph 2,  
each Member State may lay down rules on whether and to what extent  
impose administrative fines on authorities and public bodies established in  
that Member State.

Therefore, in accordance with the applicable legislation and having assessed the criteria for  
graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE UNIÓN SINDICAL OBRERA, with NIF G28567402, for a  
infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD, a  
warning sanction.

SECOND: NOTIFY this resolution to the WORKERS' UNION.

In accordance with the provisions of article 50 of the LOPDGDD, this  
Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the  
LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

counting from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

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Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

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