

□ Procedure No.: PS/00301/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On 02/10/2020 it had entry, from the CATALAN AGENCY OF DATA PROTECTION, claim from A.A.A. (hereinafter, the claimant) against TNT EXPRESS WORLDWIDE SPAIN, S.L. with CIF B28905784 (hereinafter, the claimed one).

The reasons on which the claim is based are that on 01/07/2020 "I access the website \*\*\*URL.1 to hire a private courier service. The reservation of the service is made from my private email (\*\*\*EMAIL.1) and payment is made with a private VISA card. The direction collection (only specified as collection address) is that of the company SATI ENVIROTECH SL, where I work. The company provides the service correctly. The problem comes a week, when in the accounting department of my company receive an invoice from TNT in the name of SATI ENVIROTECH SL, with all the data shipment details: my personal email address and the name, address and details of recipient's contact information (such as delivery information). The company TNT has associated for own will a particular order to a company customer account, when the service has been contracted at a private level and only the address of the company has been given as a point of collection, and now, my company has two invoices (the wrong initial one and the credit correction) with my personal data and that of the recipient and that were provided exclusively to the company. TNT transport company..."

Together with the claim, it provides ELEVEN FILES, pdf format, extracting as more important:

1) To identify it, with shipment number ending in 60, name "adress ..." that identifies

a document with data from the TNT delivery note number, nine figures, ending in 60, fe-

cha shipment \*\*\*DATE.1, which appears in the box: sender (sender) "

" with the

bill

: "name and surnames of the re-

data of the company SATI ENVIRO TECH, and address

claimant, telephone: \*\*\*TELEPHONE.1 that coincides with that of the claimant in the claim,

and delivery address in the name of another person, with an address. "date of shipment \*\*\*FE-

CHA.1", goods description: "\*\*\*\*DESCRIPTION.1" In the box "delivery address" and

"Contact" .

contact

2) To identify it, ending in 28, it is a capture of the invoice \*\*\*FACTURA.1, "invoice pa-

gada", "invoice date" 01/22/20, NIF ES\*\*\*NIF.1 (is the claimant), data of the claim-

te, delivery note number ending in 60, customer code number \*\*\*CODE.1.

3) To identify it: "shipping invoice", contains an email dated 01/30/2020, from a

email address of TNT to the claimant, in which it indicates " We enclose an invoice

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\*\*\*INVOICE.1 of the shipment \*\*\*SHIPMENT.1 with fiscal data, according to request. Please review and

issue the payment by bank transfer to the account SANTANDER ES\*\*\*CUENTA.1.

4) To identify it: "shipping external invoice", four pages, email dated 02/04/2020. In

this email, a TNT employee tells the claimant "we have located your payment with

card and canceled the invoice. Initially, SATI was billed because when entering the data of the

company, the system understood that the shipment was from the company and not personal". It has as an-

Another email dated 02/3, from the claimant to TNT, in which she indicates "it was a shipment that

I managed it, but it was for someone else, she paid with her card" "I mean, the only thing I could

I could do is look in my mailbox for your own reservation confirmation email.

go and pay for the service. You should have this information too..." I agree to the

TNT website to contract a collection service. All the management is done associated with my

personal email account, which is the same from which I am writing to you. as lu-

collection point, I put the address of my company (SATI ENVIROTECH SL) which is a client

yours but it is not who is requesting the service.

- I make the payment and the amount is charged to the card. You come, pick up the package and deliver it.

So far so good.

- They contact me from accounting of my company to find out why they have received an invoice.

ra that does not correspond to a shipment of the company. I show them the email of the service reservation

cio, where do you see that I am the one who requests it and I am the one who makes the payment. they tell me no

there is a problem but ask you for the payment invoice to rectify that information.

- After more than a week, you send the invoice for that subscription to the company. Perfect.

- You contact me asking me to pay you back for the service...

- I inform you that it has already been paid, as it appears in the header of the invoice that you received.

you yourselves send me in that last email...and today, February 3, almost a month later

of the incidence... you ask me to send you the details of the payment made.

-That is, you, at your own risk and expense, have associated a service and an amount to a

client who has not requested anything from you. I didn't know that once you have a registered address

as a client you take the liberty of associating a service in which the address coincides with

your client, but not the payment details or the personal email requesting the service, etc.

-In fact, I would like to know what kind of treatment you make of personal data, because

now in my company they have an invoice that you have sent with personal information

sound of mine Do you work based on the provisions of the General Data Protection Law?

Why, if only the collection address coincides with your client, but it has been done since?

of a personal email, with a personal credit card and outside the company, with information

information of a private nature (such as the name and address of the recipient) you associate the

ordered to the company SATI ENVIROTECH and you send an invoice for a service that is not applicable

and with private data?

5) To identify it: "external shipping invoice", with three pages, email, claimed, from

01/31/2020 to the claimant: "Please, to locate the payment, can you provide us with the date of

charged to your card and the exact amount?" Thank you very much in advance." It is preceded by another

claimant, on 01/30/2020, at 1:22 p.m., indicating "This invoice was paid at the time of

the online reservation of the service. Please review your payments or modify the text of the email

where payment by transfer is requested", which in turn is preceded by the one claimed to

the claimant of 01/30/2020, 13, 18 indicating "We attach invoice \*\*\*FACTURA.1 of the en-

shipping \*\*\*SHIPPING.1 with fiscal data, according to request.

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Please review and issue the payment by bank transfer to the SANTANDER account

IS\*\*\*ACCOUNT.1."

6) To identify it: "regarding the shipment", two pages, email dated 01/10/2020 from the re-

creating out to the claimed, states "I don't have a client account. My data is..." provides

your address data, DNI no. phone and email. It is preceded by an email from the same day, from

the claimed one that indicates "we contacted you regarding the shipment with the delivery note number

60. We have received a request from you where you indicate that you are that you

be billed for this shipment. Could you please tell us the account number with TNT or

If you do not have the following data available to us..." and ask for the mentioned data to create that account.

7) Named: "TNT collection". Two pages, email from \*\*\*DATE.1 in which

informs that "the collection of your shipment has been requested on \*\*\*DATE.1" and the person to whom delivered, with the delivery address

SECOND: In view of the facts denounced in the claim and the documents

provided by the claimant, on 06/02/2020, the General Subdirectorate for Data Inspection

proceeded to transfer the claim to the respondent so that she could report on the facts, if

well elapsed time did not respond.

The claim was admitted for processing on 09/09/2020.

THIRD: On 11/3/2020, the Director of the AEPD agreed:

"INITIATE PUNISHMENT PROCEDURE against TNT EXPRESS WORLDWIDE

SPAIN, S.L., with CIF B28905784, for the alleged infringement of article 5.1.d) of the RGPD,

as stated in article 83.5. a) of the same standard."

"For the purposes specified in the art. 64.2 b) of Law 39/2015, of 1/10, of the

Common Administrative Procedure of Public Administrations (LPACAP), the

sanction that could correspond would be 10,000 euros, without prejudice to what results from the instruction."

FOURTH: The start agreement was notified electronically. figure in the file

certificate of 11/14/2020 of Electronic Notification Services and Management

FNMT-RCM Enabled Electronics:

"That the Ministry of Economic Affairs and Digital Transformation (through the

General Secretariat of Digital Administration) is currently the head of the Service of

Electronic Notifications (SNE) and Authorized Electronic Address (DEH) in accordance with

Order PRE/878/2010 and Royal Decree 139/2020, of January 28. The provider of said

service since June 26, 2015 is the National Currency and Stamp Factory-Royal House de la Moneda (FNMT-RCM), according to the current Management Commission of the Ministry of Treasury and Public Administrations. -That through said service the notification: Reference: \*\*\*REFERENCE.1 Acting Administration: Spanish Agency for Data Protection (AEPD) Holder: TNT EXPRESS WORLDWIDE (SPAIN) SL - B28905784 Subject: "Notification available in the Folder or DEH of the indicated holder" with the C/ Jorge Juan, 6 28001 – Madrid www.aepd.es sedeagpd.gob.es

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next result: Date made available: 11/03/2020 20:39:23 Rejection date automatic: 11/14/2020 00:00:00 Automatic rejection occurs, in general, after Ten calendar days have elapsed since it was made available for access according to paragraph 2, article 43, of the law 39/2015, of October 1, of the Administrative Procedure Common of Public Administrations. And in particular, after the deadline established by the acting Administration in accordance with the specific legal regulations that be applicable"

Against the initial agreement, no allegations have been received.

FIFTH: On 05/13/2021, a resolution proposal is issued for the literal:

"That by the Director of the Spanish Agency for Data Protection, a sanction is made for TNT EXPRESS WORLDWIDE SPAIN, S.L., with NIF B28905784, for an infringement of the article 5.1.d) of the RGPD, in accordance with article 83.5 a) of the RGPD, with a fine of 10,000 euros (ten honey euros)."

Appearing notified on 05/19/2021, no allegations are received against it.

PROVEN FACTS

1) The claimant, on \*\*\*DATE.1, contracts a private courier service so that merchandise is delivered, for which you access the \*\*\*URL.1 website and place the order from your private e-mail (\*\*\*EMAIL.1) stating that you made the payment with a VISA card particular. The collection address of the merchandise to be delivered (only specified as collection address) is that of your company, SATI ENVIROTECH SL, in which you provide services, designating a person for that purpose. The claimant states that the service is rendered correctly.

2) A few days later, the claimant stated that the accounting department of SATI ENVIROTECH SL, receives an invoice from TNT in the name of SATI ENVIROTECH SL, "with all the personal data of the shipment: my personal email address and the name, address and recipient contact details (such as delivery information")

3) The claimed, according to documents available to the claimant, delivery notes, manifests, invoices, has the name and surname of the claimant, her address, her email address number and NIF, and the day and amount paid by card payment of your order.

4) The claimed party sent the claimant the invoice by e-mail at the time \*\*\*INVOICE.1, "invoice paid", "invoice date" 01/22/20, claimant NIF), data from the claimant, shipment number ending in 60, customer code number \*\*\*CODE.1.

5) In the emails exchanged between claimant and claimed after the delivery of the merchandise (example 01-30-2020), despite the claimant stating that paid for the service at the time of the online contract, and after having provided the service delivery of the merchandise, the claimed request the claimant in an email from 01/30/2010 at 1:18 p.m., after sending the invoice in the same, that "issue the payment by bank transfer to an account indicated", replying to the claimant that the

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same day of the service request, \*\*\*DATE.1. In another e-mail, the respondent asks for data on 01/31/2020 to locate the payment.

6) In an email from the respondent to the claimant dated 02/04/2020, it informs

“we have located your card payment and canceled the invoice” “initially SATI was invoiced ENVIROTECH, because when entering the company data, the system understood that the shipment was company and not personal. It is preceded by another email from the claimant indicating that the delivery service made it associated with your personal email account.

## FOUNDATIONS OF LAW

Yo

The Director of the Spanish Agency for

Data Protection, in accordance with the provisions of art. 58.2 of the RGPD and in art.

47 and 48.1 of LOPDGDD.

II

Defines article 4.2 of the RGPD: “processing”: any operation or set of operations

made on personal data or sets of personal data, either by

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

conservation, adaptation or modification, extraction, consultation, use, communication by

transmission, broadcast or any other form of authorization of access, collation or interconnection,

limitation, suppression or destruction;”

The data that the claimed party had to process in its systems of the claimant, who was the one that

contracted, have been associated with the data of the company in which the claimant provided

services. According to the complainant, the headquarters of the company was pointed out to a particular person

for the delivery of the merchandise. The respondent assigns an invoice to the company, containing

claimant information. These proven facts revealed suppose the



infringement of the claimed article 5.1.d) that indicates: "the personal data will be:

"d) accurate and, if necessary, updated; all reasonable steps will be taken

so that personal data that is inaccurate with respect to

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

The established obligation of the need for the personal data that is

collected and processed in any file or any processing operation, are accurate and

respond at all times to the current situation of those affected, being responsible for the

treatment who is responsible for compliance with this obligation.

Issue the invoice to the company with the data of the claimant, when she was the only one

petitioner, supposes an inaccurate treatment of the claimant's data, giving rise to

that the claimant had to worry about fixing the situation due to that lack of accuracy

with respect to the purposes for which they were to be processed.

Article 83.5 of the RGPD indicates:

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"The infractions of the following dispositions will be sanctioned, in accordance with the section

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

dam, 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 the treatment, including the conditions for the consent

according to articles 5, 6, 7 and 9;"

Among the corrective powers contemplated in article 58 of the RGPD, in section 2 "i) im-

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.”

The LOPDGDD states in its article 72:

1. 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 in Article 5 of Regulation (EU) 2016/679.”

#### IV

The defendant is an entity obliged to interact electronically with the Administration electronically (art 14.2.a) LPACAP. The start-up agreement contained the necessary elements aries to make a pronouncement on the claim. The telematic notification produced cide has the legal effect of having been rejected, in accordance with article 43 of the LPA-CPAC, practice of notifications through electronic means:

"1. Notifications by electronic means will be made by appearance at the electronic headquarters of the Administration or Acting Body, through the address electronic enabled only or through both systems, as each Administration has or organism.

For the purposes provided in this article, it is understood by appearance at the headquarters electronically, access by the interested party or his duly identified representative to the notification content.

2. The notifications by electronic means will be understood as made at the moment in which access to its content occurs.

When notification by electronic means is mandatory, or has been expressly chosen by the interested party, it will be understood as rejected when the ten calendar days from the availability of the notification without accessing its

contents."

v

Regarding the amount of the sanction of administrative fine that would proceed to impose, it will have been

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to be in accordance with the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

"1 Each control authority will guarantee that the imposition of administrative fines with

in accordance with this article for the infringements of this Regulation indicated in the

sections 4, 5 and 6 are in each individual case effective, proportionate and dissuasive."

"2 The administrative fines will be imposed, depending on the circumstances of each individual case.

divided, as an additional or substitute for the measures contemplated in article 58, paragraphs

C 2, letters a) to h) and j). When deciding to impose an administrative fine and its amount in

each individual case will be duly taken into account:

a) the nature, seriousness and duration of the infringement, taking into account the nature, al-

scope or purpose of the processing operation in question, as well as the number of

individuals affected and the level of damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the person responsible or in charge of the treatment to alleviate the

damages suffered by the interested parties;

d) the degree of responsibility of the data controller or data processor, taking into account

ta of the technical or organizational measures that they have applied under articles 25 and

32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the infringement.

tion 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

The person responsible or the person in charge notified the infringement and, if so, to what extent;

i) when the measures indicated in article 58, section 2, have been previously ordered

mind against the person in charge or the person in charge in question in relation to the same matter,

compliance with said measures;

j) adherence to codes of conduct under Article 40 or 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."

In relation to section k) of article 83.2 of the RGPD, the LOPDGDD, article 76, "Sanctions

and corrective measures", provides:

"two. 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) The link between the offender's activity and the performance of personal data processing.

sound.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have induced the commission of the crime.

infringement.

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

tion, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection officer.

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

alternative conflict resolution systems, in those cases in which there are con-

troveries between those and any interested party.”

Concurs article 83.2.k) of the RGPD, specified in article 76.2 b) of the LOPDGDD,

for the usual treatment of personal data of clients that is assumed to a company

dedicated to delivery of goods.

For this reason, it is considered that the penalty to be imposed is 10,000 euros.

Therefore, in accordance with the applicable legislation and having assessed the graduation criteria

of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE a fine of 10,000 euros on TNT EXPRESS WORLDWIDE SPAIN,

S.L., with CIF B28905784, for an infringement of article 5.1.d) of the RGPD, in accordance

with article 83.5 a) of the RGPD.

SECOND: NOTIFY this resolution to TNT EXPRESS WORLDWIDE SPAIN, S.L.

THIRD

: Warn the sanctioned person that he must make the imposed sanction effective once

that this resolution is enforceable, in accordance with the provisions of art. 98.1.b) of

Law 39/2015, of 1/10, of the Common Administrative Procedure of the Administrations

Public (hereinafter LPACAP), within the voluntary payment period established in art. 68 of the

General Collection Regulations, approved by Royal Decree 939/2005, of 07/29, in

relation to art. 62 of Law 58/2003, of 12/17, through its entry, indicating the NIF of the sanctioned and the number of the procedure that appears in the heading of this document, in restricted account number ES00 0000 0000 0000 0000 0000, opened in the name of the Spanish Agency for Data Protection in the banking entity CAIXABANK, S.A.. In Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is between the days 1 and 15 of each month, both inclusive, the term to make the voluntary payment will be until on the 20th day of the following month or immediately after, and if it is between the 16th and last of each month, both inclusive, the payment term will be until the 5th of the second month next or immediately following business.

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

It 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 Agency Spanish Data Protection Authority within a month from the day following the

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notification of this resolution or directly contentious-administrative appeal before the Chamber of the Contentious-administrative of the National High Court, in accordance with the provisions of the article 25 and in section 5 of the fourth additional provision of Law 29/1998, of 13 July, regulatory of the Contentious-administrative Jurisdiction, in the term of two months to count 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, it may be precautionary suspension of the firm decision in administrative proceedings if the interested party expresses its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through one of the

remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1.

You must also 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 suspension

precautionary

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