

□ N/Ref.: E/00189/2020 - E/01017/2020 – A61VM 101580

RESOLUTION OF FILE OF ACTIONS

Of the actions followed due to the claim filed with the Agency

Spanish Data Protection, for alleged violation of the Regulation (EU)

2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the

protection of natural persons with regard to data processing

personal information and the free circulation of these data (RGPD, hereinafter) and having

based on the following

FACTS

: Dated November 20, 2019 and entry registration number

FIRST

055021/2019, a claim filed by A.A.A.

(hereinafter, the claimant) against the person in charge of the telephone directory ***URL.1,

for an alleged violation of arts. 6 and 17 of the GDPR.

The grounds on which the claimant bases the claim are:

□ Publication in the aforementioned web directory of the personal data of the claimant (name, surnames, telephone and address of your former business, already closed), without your consent.

□ Absence of response to respective suppression requests made on dates 09/25/2019 and 10/28/2019 through the e-mail address indicated on the portal website, ***EMAIL.1.

The published data is accessible through the URL:

***URL.2.

: According to your privacy policy at the date of presentation of the

SECOND

claim, the person responsible for the processing of personal data carried out

on the aforementioned platform was PLUSIDEAS LTD., established in ***COUNTRY.1.

THIRD: Taking into account the possible cross-border nature of the treatment, with

dated January 30, 2020, the provisional file of the procedure and the

remission of the claim to the control authority of ***COUNTRY.1, the Information

Commissioner's Office (ICO), for being the competent authority to act as

main control, in accordance with the provisions of article 56.1 of the RGPD.

FOURTH: This referral was made, through the "Market Information System

Internal" (IMI).

The control authority of ***COUNTRY.1 agreed to act as the main authority.

In this case, this Agency only acts as the interested control authority.

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FIFTH: On January 1, 2021, ***COUNTRY.1 has ceased to belong to the Union

Union, and, consequently, its supervisory authority, ICO, no longer participates in the

cooperation and coherence mechanism established in Chapter VII of the RGPD. For

its part, the entity PLUSIDEAS LTD. has ceased to be established

principal of the data controller in the European Union, and there is no information

on the existence of a new main establishment of the controller in the Union.

FOUNDATIONS OF LAW

I - Competition

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

European Parliament and of the Council of April 27, 2016, regarding the protection of

individuals with regard to the processing of personal data and the free circulation of these data (GDPR), fully applicable from May 25, 2018, recognizes each control authority, is competent to resolve this claim the Director of the Spanish Agency for Data Protection, in accordance with the article 12.2, sections i) and j) of Royal Decree 428/1993, of March 26, by which the Statute of the Data Protection Agency and the Provision transitory first of the Organic Law 3/2018, of December 5, of Protection of Personal data and guarantee of digital rights (hereinafter LOPDGDD).

II - Internal Market Information System (IMI)

The Internal Market Information System is regulated by the Regulation (EU) No. 1024/2012, of the European Parliament and of the Council, of 25 October 2012 (IMI Regulation), and its objective is to promote cooperation cross-border administrative assistance, mutual assistance between Member States and the information exchange.

III - Determination of the territorial scope

As specified in article 66 of the LOPDGDD:

"one. Except in the cases referred to in article 64.3 of this organic law,

The Spanish Agency for Data Protection must, prior to the performance of any other action, including the admission to processing of a claim or the beginning of preliminary investigation actions, examine its competition and determine the national or cross-border character, in any of its modalities, the procedure to be followed.

2. If the Spanish Data Protection Agency considers that it does not have the condition of main control authority for the processing of the procedure will send, without further ado, the claim formulated to the main control authority that it considers competent, so that it is given the appropriate course. The

Spanish Agency for Data Protection will notify this circumstance to whom, in their case, I would have made the claim.

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The agreement by which the referral referred to in the previous paragraph is resolved imply the provisional filing of the procedure, notwithstanding that the Agency Spanish Data Protection is issued, if appropriate, the resolution to the one referred to in section 8 of article 60 of Regulation (EU) 2016/679.”

IV - Main establishment, cross-border treatment and control authority principal

Article 4.16 of the RGPD defines “main establishment”:

“a) with regard to a data controller with establishments in more of a Member State, the place of its central administration in the Union, unless the decisions about the purposes and means of processing are made in another establishment of the controller in the Union and the latter establishment has the power to enforce such decisions, in which case the establishment that has Once such decisions have been made, it will be considered a main establishment;

b) with regard to a data processor with establishments in more than a Member State, the place of its central administration in the Union or, if it does not have this, the establishment of the person in charge in the Union in which the main processing activities in the context of the activities of a treatment facility processor to the extent that the processor is subject to specific obligations in accordance with this Regulation”

For its part, article 4.23 of the RGPD considers “cross-border processing”:

“a) the processing of personal data carried out in the context of the activities of establishments in more than one Member State of a controller or processor of processing in the Union, if the controller or processor is established in more of a Member State,

or b) the processing of personal data carried out in the context of the activities of a single establishment of a controller or processor in the Union, but which substantially affects or is likely to substantially affect interested in more than one Member State”

The RGPD provides, in its article 56.1, for cases of processing cross-border, provided for in its article 4.23), in relation to the competence of the main supervisory authority, which, without prejudice to the provisions of article 55, the control authority of the main establishment or of the sole establishment of the responsible or the person in charge of the treatment will be competent to act as lead supervisory authority for cross-border processing carried out by said person in charge or person in charge, in accordance with the procedure established in article 60.

In the case examined, as stated, the entity established in ***COUNTRY.1 PLUSIDEAS LTD. was the principal establishment in the European Union of the person responsible treatment, on the date on which the claim was filed, so the control authority of this country, ICO, was competent to act as the authority main control.

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V - Interested control authority

In accordance with the provisions of article 4.22) of the RGPD, it is the Authority of interested control, the control authority affected by the data processing personal because:

- a.- The controller or processor is established in the territory of the Member State of that supervisory authority;
- b.- The interested parties who reside in the Member State of that authority of control are substantially affected or are likely to be substantially affected by the treatment, or
- c.- A claim has been filed with that control authority.

In this procedure, they act as "control authority" interested" the control authorities listed in the fourth fact, in addition to this Agency, which is the one that has received the claim.

VI – Managers outside the European Union

The art. 3.2 of the RGPD defines its scope as follows with regard to the treatments of those responsible or in charge that are not established in the European Union:

“This Regulation applies to the processing of personal data of interested parties residing in the Union by a person in charge or person in charge not established in the Union, when the treatment activities are related to:

to)

the offer of goods or services to said interested parties in the Union, regardless of whether they are required to pay, or

- b) the control of their behavior, to the extent that it takes place in the Union."

VII - Claimed issue and legal reasoning

In this case, it has been submitted to the Spanish Data Protection Agency a claim for an alleged violation of arts. 6 and 17 of the RGPD, related to cross-border processing of personal data made in the telephone directory ***URL.1.

The aforementioned claim was transferred to ICO –the control authority of ***PAÍS.1– by be competent to act as the main control authority, in accordance with the provided in article 56.1 of the RGPD. ICO accepted the case, but there is no record subsequent communication from this authority in relation to it.

Since January 1, 2021, ***COUNTRY.1 has ceased to belong to the Union Union, and, consequently, its supervisory authority, ICO, no longer participates in the

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cooperation and coherence mechanism established in Chapter VII of the RGPD. For

its part, the entity PLUSIDEAS LTD. has ceased to be established

principal of the data controller in the European Union, and there is no information

on the existence of a new main establishment of the controller in the Union.

Consequently, the person responsible has become outside the Union, and,

In this regard, art. 3.2 of the RGPD determines that only this

regulation to treatments whose activities are related to the supply of goods

or services to said interested parties in the Union, or with the control of their

behaviour, to the extent that it takes place in the Union.

The examination of the web portal and the circumstances of the case does not allow us to affirm that the

responsible has offered any good or service to the claimant, with a particular character.

For this reason, this Agency does not consider itself competent to proceed with the processing of the case and the investigation of the questions that have remained open. In conclusion, the filing of these proceedings proceeds, as well as the closure of the proceedings.

In accordance with what was indicated, by the Director of the Spanish Protection Agency of data,

HE REMEMBERS:

FIRST: PROCEED TO FILE this claim, filed in date November 20, 2019 and entry registration number 055021/2019.

SECOND: NOTIFY this resolution to the CLAIMANT

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

The resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative process as prescribed by art. 114.1.c) of Law 39/2015, of October 1, on Procedure

Common Administrative Law of Public Administrations, and in accordance with the established in arts. 112 and 123 of the aforementioned Law 39/2015, of October 1, 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

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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