

□ N/Ref.: E/00187/2020 – CO/00017/2020

1120-230420

RESOLUTION OF FILE OF ACTIONS

Of the actions followed on the occasion of the claim presented in the Spanish Agency for Data Protection, for alleged violation of the Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding to the protection of natural persons with regard to data processing personal data and the free circulation of these data (hereinafter, RGPD) and having based on the following

FACTS

FIRST: Dated December 2, 2019 and entry registration number 057321/2019, a claim was entered in this Agency, related to a possible cross-border processing of personal data carried out in the WORDPRESS blogging platform, presented by A.A.A. Representing BBB (hereinafter, the claimant) for an alleged violation of arts. 6 and 17 of the GDPR.

The grounds on which the claimant bases the claim are:

- Publication of personal data of the claimant (name, surnames, nationality, bank account number and an identifying photograph) without your consent, on the blog ***BLOG.1 hosted on the WORDPRESS platform.
- Non-attention, after 2 months, of a deletion request sent to the e-mail address indicated by the company that manages the aforementioned content platform, ***EMAIL.1. The company sent him, dated 08/21/2019, an email asking for the specific URL where it was located the information you wanted to delete, but, after reiterating the URL already indicated in

a previous mail and provide your identification document (copy of the passport), not got a response again.

☐ The claimant requests protection of his right, and, likewise, that the company that offers content publication services through the platform

WORDPRESS, adapt your web pages for the correct exercise of rights, providing information in a clear and simple way.

Together with the claim, screen prints of the aforementioned publication, which is accessible at the URL: ***URL.1, as well as certification electronic request for deletion addressed to the person in charge.

SECOND: The person responsible for data processing carried out by the blogging platform WORDPRESS, the American company AUTOMATTIC INC., has in ***PAÍS.1 its main or sole establishment for the processing of personal data of European residents (the company named AUT O'MATTIC A8C IRELAND LTD).

THIRD: Taking into account the possible cross-border nature of the claim, On February 20, 2020, the provisional file of the procedure was agreed and www.aepd.es

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the referral of the claim to the control authority of ***COUNTRY.1, the “Data Protection Commission” (DPC), as it is the competent authority to act as main control in the cooperation procedure, in accordance with the provisions of the article 56.1 of the RGPD.

FOURTH: This referral to ***COUNTRY.1 was made through the “Information System of the Internal Market” (IMI). The control authority of ***COUNTRY.1 acknowledged receipt of the

claim, and referred it to its Claims Assessment Unit.

FIFTH: The control authority of ***COUNTRY.1 has contacted this

Agency, facilitating the response of the data controller and arguing that

the processing of personal data reported does not fall within the scope of the RGPD,

basing his reasoning on the fact that the client who makes the publications has signed his

contract with the American headquarters, that the purpose of the blog is to spread

of news related to Ecuador, and that are not addressed to any citizen

specifically European.

In addition, the data controller states that he has crossed out the bank details

of the claimant that were shown in the denounced publication.

The Inspection services of this Agency have verified that the URL where

the denounced newspaper article was published now leads to a page of

error.

FOUNDATIONS OF LAW

I - Competition

In accordance with the provisions of article 60.8 of the RGPD, the Director of the

Spanish Data Protection Agency is competent to adopt this resolution.

in accordance with article 12.2, section i) of Royal Decree 428/1993, of 26

March, which approves the Statute of the Data Protection Agency (in

hereinafter, RD 428/1993) and the first transitory provision of Organic Law 3/2018,

of December 5, Protection of Personal Data and guarantee of digital rights

such (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 October 25

2012 (IMI Regulation), and its objective is to promote administrative cooperation

cross-border, mutual assistance between Member States and the exchange of information

training.

III - Determination of the territorial scope

The art. 3.2 of the RGPD establishes the following:

"one. This Regulation applies to the processing of personal data in the context of the activities of an establishment of the person in charge or of the person in charge in the Union, regardless of whether the processing takes place in the Union or not.

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to)

2. This Regulation applies to the processing of personal data of in-stakeholders residing in the Union by a non-state manager or manager.

established in the Union, when the treatment activities are related 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.

3. This Regulation applies to the processing of personal data by part of a controller who is not established in the Union but in a place where the law of the Member States is applicable under domestic law.

tional public."

As specified in article 66 of the LOPDGDD:

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

nica, the Spanish Agency for Data Protection must, prior to the realisation, lization of any other action, including the admission to processing of a claim or the beginning of preliminary investigation actions, examine their competence and determine the national or cross-border character, in any of its modalities, of the procedure to follow.

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 referred to will, without further formality, the claim made to the main control authority that it considers competent, so that it is given the appropriate course. The Agency The Spanish Data Protection Agency will notify this circumstance to whom, if applicable, would have made the claim.

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

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

Article 4.16 of the RGPD defines “main establishment”:

“a) in what refers to a data controller with establishments in more than one Member State, the place of its central administration in the Union, except that decisions about the purposes and means of processing be made in another state 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 adopted such decisions shall be deemed principal establishment;

b) with regard to a data processor with establishments in

more than one Member State, the place of its central administration in the Union or, if derived from this, the establishment of the person in charge in the Union in which the main treatment activities in the context of the activities of an establishment foundation of the processor to the extent that the processor is subject to obligations specific 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 establishments in more than one Member State of a manager or a manager

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of processing in the Union, if the controller or processor is established in more than one Member State,

or b) the processing of personal data carried out in the context of the activities from 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 in charge in accordance with the procedure established in article

60.

In the case examined, as stated, AUTOMATTIC INC. It has in

***COUNTRY.1 your main or sole establishment for data processing

personal of European residents (the company AUT O'MATTIC A8C IRELAND LTD),

reason why the control authority of this country, the Data Protection Commission, is the

competent to act as the main supervisory authority in the procedure of

cooperation.

V - Interested control authority

In accordance with the provisions of article 4.22) of the RGD, it is the Authority of

interested control, the control authority affected by the processing of personal data

sonal 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 control authority

control are substantially affected or are likely to be substantially affected.

mind affected by the treatment, or

c.- A claim has been filed with that control authority.

In this procedure, it only acts as "internal control authority".

Teresada" the Spanish control authority.

VI - Cooperation and coherence procedure

Article 60 of the RGD, which regulates the cooperation procedure between the

main supervisory authority and the other interested supervisory authorities, has

in section 8, the following:

"8. Notwithstanding the provisions of section 7, when rejecting or rejecting

a claim, the supervisory authority to which it has been filed will adopt the

decision, it will notify the claimant and inform the data controller of it."

VII - Claimed issue and legal reasoning

In this case, it has been presented to the Spanish Data Protection Agency.

cough claim for an alleged violation of art. 6 and 17 of the RGD, related

with possible cross-border processing of personal data, carried out

on the WORDPRESS blogging platform.

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The person in charge of said platform is an American company, AUTO-

MATTIC INC., which has a principal or sole establishment in ***COUNTRY.1 for

your processing of personal data of European residents (a company called

AUTOMATTIC A8C IRELAND LTD). Consequently, this Agency referred the case to

the Data Protection Commission (DPC), as the leading authority on the

cooperation procedure, following the provisions of art. 60 of the GDPR.

After a few months, the control authority of ***PAÍS.1 has communicated

with this Agency, to facilitate the response of the data controller. At

case of this claim, it is a blog published and operated by a

client who is based in Ecuador, which is not in the list of countries

whose clients sign their contracts with the establishment that the person in charge has in

***COUNTRY.1, namely: European countries and others specifically designated, such as

Australia or New Zealand. The client has signed his contract directly with the headquarters

American. In addition, the purpose of the blog is the dissemination of news related

with Ecuador, which are not addressed to any specific European citizen. end

concluding that the processing of personal data carried out is not

covered by the GDPR. Finally, the data controller declares that he has crossed out the bank details of the claimant that were shown in the publication reported.

After analyzing the case in depth, this Agency estimates that the treatment of personal data that is denounced in it is not included in the territorial scope of the RGPD, defined in art. 3.2 of RGPD, as it is an offer of a service (dissemination of journalistic information) to interested parties residing in Ecuador, and, therefore, outside the European Union.

This implies that the treatment is outside the scope of competence of this Agency. However, as far as this issue is concerned, the controller has stated that they had proceeded to delete the personal data of a banking nature, and the Inspection services of this Agency have been able to verify that the totality of the website where such information appeared has been removed from the blog. Thus, the claimant's personal data is no longer published.

Therefore, in accordance with what was indicated, by the Director of the Agency Spanish Data Protection,

HE REMEMBERS:

FIRST: PROCEED TO FILE the claim filed on the 2nd of December 2019 and check-in number 057321/2019

SECOND: NOTIFY this resolution to the CLAIMANT

THIRD: INFORM AUT O'MATTIC A8C IRELAND LTD of the decision adopted in this resolution

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

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

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Against this resolution, which puts an end to the administrative procedure according to the provisions do by art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure Common Agreement of Public Administrations, and in accordance with the provisions in arts. 112 and 123 of the aforementioned Law 39/2015, of October 1, the interested parties may may file, optionally, an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a period of one month from the day following the notification of this resolution or directly admissible contentious appeal before the Contentious-Administrative Chamber of the National High Court, with in accordance with the provisions of article 25 and section 5 of the additional provision fourth of Law 29/1998, of July 13, regulating the Contentious-Administrative Jurisdiction ministerial, within a period of two months from the day following the notification of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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