

□ File No.: PS/00286/2021

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On 01/8/2021, a claim is received from A.A.A. and others, who manifest They are public officials and teachers attached to the Official School of Languages (EOI) of (COUNCIL OF Madrid "Jesús Maestro" (claimants) against the aforementioned EOI, EDUCATION, UNIVERSITIES, SCIENCE AND SPOKESMAN of the CCAA OF MADRID), with NIF S7800001E (hereinafter, the claimed party).

The reasons on which the claim is based are the following:

-On 11/12/2019, the Director of the EOI (Director) "imposed on us, without consultation, debate or gathering consent, the use of personal email accounts created in the domain eoijesusmaestro.es, hosted on the GOOGLE SUITE platform", (GS) "to be used as a form of relationship and communication for all procedures, whether personal or with students, mandatorily establishing that all communications and procedures administrative tasks had to be carried out through said platform" "linked to the account personnel that appeared in the file of each teacher or worker".

The complainants point out that the Director (with sole system administrator privileges) is enabled by the "platform" "to access all personal information and even to the emails that are received or sent", by having "single administrator" privileges. contributes ANNEX 16, consisting of the printing of a page from the support website of GS, entitled "data access by the administrator or service provider", which informs that with the GOOGLE WORKSPACE account, formerly GS, "using the

address assigned to you by your administrator, you can access most of the Google products. "Remember that the administrator has access to all data stored in this account, including your email. In addition, the manager of the domain can disable certain services or limit the ability to transfer data from or to another account of the organization".

"Previously, it was being used by all the staff, "personal and institutions within the platform of the Ministry of Education, at educamadrid.org."

In ANNEX 4, provide a copy of the modification of the internal regulations of 12/20/2019, which manifest was unilateral, in which it provides for the obligation to relate to the School or the exercise of rights, with email accounts, stating that: "the same email address individual email will be used as personal identification and access credential to the internal pages of the center and in the different procedures that are articulated." The mailbox associated with that address should be consulted at least at the beginning of each workday".

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On 02/17/2020, ***POSITION 1 of the EOI sent "a query" via email to the Department of Data Protection (DPD) of the Ministry, on the change of use of mail, and the impossibility of using the institutional mail of madrid.org. On 02/19/2020, receive response indicating that "the facts exposed could violate the protection regulations data, which is why the circumstances that occurred were going to be studied and documented." HE documents in ANNEX 6, (32/62) which includes:

- Copy of the email response from the DPD of 02/19/2020, "query about g. suite", containing in

I attach three pdf files about:

- "instructions for email users 2010", "BOCM instructions 2004 publication web pages Educamadrid.pdf" and "I use applications outside of EducaMadrid", which has a link of the AEPD: "report on the use by teachers and students of applications that store data in the cloud with systems outside of educational platforms".

The e-mail indicates: "with the use of non-corporate tools, control is lost on the processing of personal data as well as compliance with the regulations in the use of the data and the security measures that must be applied. Must take into account that the data controller is the GENERAL DIRECTORATE OF EDUCATION SECONDARY, VOCATIONAL TRAINING AND SPECIAL REGIME (DGESFP and RES), who is the one who decides on the purpose, content and use of personal data personnel "Therefore, the Director of the center has no authority over the decision of the purposes in terms of data protection, is assuming a responsibility to behind the person responsible."

- Provide a copy of ANNEX 9, (41/62) of the DPD, dated April 20, of 6 pages entitled: "USE OF APPLICATIONS OUTSIDE THOSE OF THE COMMUNITY OF MADRID" (published on the website of the Ministry and the DPD) that responds to a "request for information on legality" contained in ANNEX 8 (consultation on the imposition of the use of said accounts to teachers, made on 02/27/2020, from EOI staff to the DPD), indicating that they are unaware of the access permissions and property of the Director as domain administrator on our accounts.

It alludes to Annex 9 reproducing in part and summarizing the AEPD report on "use of by teachers and students of applications that store data in the cloud with systems outside of educational platforms" (03/06/2018) and the adequacy of the regulations in terms of security, which reproduces statements such as that "any application that include student identification can lead to profiling...".

It reiterates that a Director of an educational center is not a governing body with the capacity to decision on the processing of personal data, and that if they are, as responsible for the treatment, the General Directorates of the Ministry, in accordance with the Decree that establishes the organic structure of the Ministry of Education and Youth, Decree 288/2019 of 12/11 of the Governing Council.

The "security policy" section relating to educational centers is established in which educational applications for learning and classroom organization will be included. "The Centers must request, prior to their use, the authorization of the person in charge of the treatment."

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There must be a procedure for the center to request this prior authorization. The application will entail:

to. The evaluation of the application from the point of view of the security of the information - This requires design and constraints on the amount and type of data to be incorporated into applications, which will take into account the privacy of personal data, and will include assessing the need to dissociate or anonymize the information, especially when there is transfer of data to third parties or international transfers of data. All of this must be documented.

b. The privacy of personal data.

c. Once authorized, the center will be able to approve its "commissioning" and its incorporation into the ANNUAL GENERAL PROGRAM (PGA) with the detail of the use and the personal data that will be affected. This PGA must be accessible to the

educational community of the center for your consultation. The same requirements apply to

"Personal data processing through apps".

References to the content in the AEPD report point 5, on "guidelines for the

carrying out the evaluation of the applications.", content in use by teachers

and students of applications that store data in the cloud with systems outside the

educational platforms" (6/03/2018).

-Contains a section on "educational platform of the Community of Madrid", EducaMadrid:

"Educational centers when they use external educational platforms are only justified

when they have not been made available to the centers, means or adequate tools

and equivalents and will require the authorization of the General Directorate of the Ministry

authority, which must establish a procedure for the sake of legal certainty that

prevent the use of those that have not been expressly approved".

These evaluations and the final decision on the use of the applications or platforms

educational must be validated by the person responsible for the processing of personal data, the

Ministry of Education and Youth, through the corresponding Directorates

General, and must be subject to supervision by the Data Protection Delegation of

the Ministry, which will verify its adequacy to the applicable regulations."

It also refers to the inclusion in the PGA of the course that must include "the justified use of

the corresponding platforms or external applications, after verifying that

comply with the privacy policy required by the GDPR. In it, will be incorporated

Clear information about the treatments carried out, those responsible for them, their purposes, the

location of the data, the conservation period and the guarantees on its security. Bliss

information must be disclosed to families and students over the age of 14 at

through its publication on the website of the center and any other means that ensures

the obligation to inform about the additional purposes of the use of said tools.

The information offered must be concise, transparent, intelligible and easily accessible, with

clear and simple language, especially that addressed to minors." "It is convenient that Families consult the PGA to have adequate information, since once its use is approved, there is an obligation to sign a contract or any other legal figure that binds the responsible with the person in charge of treatment,-that is, the companies providing the

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service that requires obtaining the consent of the families so that said companies can process your personal data.

It adds that: "However, when the companies providing the service are multinationals or have a large volume of business, the school cannot underwrite itself a contract or agreement, but you must accept the conditions of use of the applications or platforms that they have established, which contradicts the requirement established by the Data protection regulation according to which it is the person in charge who must impose the Conditions for data processing by the person in charge. For this reason, the Directorate General of Bilingualism and Teaching Quality, as responsible according to the current competence framework, you must validate the use of third-party platforms or applications by part of the centers, and an agreement or contract must be signed where said General Directorate as data controller and as manager; of this the company provider, jointly establishing the conditions of treatment by the school. Once the agreement is signed, the General Directorate of Early Childhood Education and Primary and the General Directorate of Secondary Education, Vocational Training and Regime Special will be responsible, based on the powers attributed by the Decree of Ministry structure, compliance with what was agreed by the centers

educational.”

-On 04/06/2020, the DPD prepares a report "regarding the use of the GS platform for the administrative management, as well as the use of non-corporate emails associated with said platform", which he forwarded to the DGESFP and RES, and this forwarded it to the Director of the EOI on 05/6/2020 (copy of the transfer in ANNEX 13). The report indicates:

"Although due to objective needs to attend to the management of the center, it has been possible to seek from its management alternatives to the institutional tools that are offered by the Ministry, their use constitutes a security risk of information, as well as for the privacy of personal data, including those of special category, as they are not hosted on secure servers in the EducaMadrid environment.”

The center must make a transition to stop using third-party services such as the Google Suite platform and its associated email accounts and have the services insurance provided by the educational administration carrying out the different procedures through the EducaMadrid platform, which provides a wide range of resources to cover the digital needs of educational centers, among which are included email, instant messaging, web hosting, cloud storage, classrooms virtual, project organizers, free package-compatible operating systems free office automation, media library, online forms and surveys, among others”.

Add at the end of the letter, that a series of actions are being carried out to improve EducaMadrid services, "among which are the agreement with Microsoft for the use of the MICROSOFT OFFICE 365 suite by the CCAA school community of Madrid, although, in no case, for functions of the management of the centers teachers, which offers digital services equivalent to those of GOOGLE

” . (underlining is of the AEPD)

-The claimants indicate that they currently continue to use the Google platform

to carry out some procedures members of the management team and technicians

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maintenance and the Secretary of Head of Studies, indirectly the teachers and the

students themselves are forced to use this email address to address the team

manager or members of the PAS (communicate possible COVID infections, in ANNEX

15) after eight months have passed since he was ordered by the aforementioned Directorate

General. The document, ANNEX 15-version 12-12-2020, contains instructions in case

someone presents symptoms compatible with COVID, and communication to

through the email address eoijesusmaestro.es of students or affected with

symptoms, and the role of the COVID Coordinator to whom the

reinstatement of the student.

Provide a copy of 18 annexes, some already mentioned, as additional documentation between

the ones that stand out:

ANNEX 1, copy of the email from the School Director dated 11/12/2019 subject:

"professional emails", in which it warns of the implementation of the email address

email address of the School, where all teachers will have a professional address

owned under the control of the school. "It will be configured with automatic forwarding to your

usual addresses so that in principle it is not necessary to consult a

separately" "that account will give us access to a series of pages and resources-

unlimited storage in the cloud, possibility of cooperative work etc." sender attached

a list of teachers' addresses, with the name of the email that would correspond to each

person.

ANNEX 2, copy of the Director's writing by email on 08/20/2020, informing the who need mobility authorizations due to restrictions that request it in the email addresses on which by clicking the email is created directly for send it.

In ANNEX 3, email of 12/2/2019, from the Director, he informs that the campaign is open to 2020 of medical examination applications, indicating the information and the link to the form to request it in the institutional portal, domain: jesusmaestro.es, informing In addition, that "in order to access the portal, you must use the new account in eojesusmaestro.es" – "the username and password were sent in a previous email".

Written communication of 05/13/2020, in response from the Director of the Madrid Territorial Area to the one sent by a teacher, a member of the School Council (Annex 7), indicating that she has raised the consult the DPD.

ANNEX 5, copy of an email dated 01/28/2020, from the Director of the EOI, regarding instructions on the matter of student reclassifications, and changes in the communication procedure to the Secretariat, filling out a form from the website of the school. "It will ask you, of course, to identify yourself with the professional account of the school and its password, the one we created in December." At the intersection of communications with other people, shipments to addresses with domain yahoo.es, or Gmail.com of 02/6/2020. Included in this annex is a letter from a teacher dated 02/06/2020 to Headquarters, from your domain address @hotmail.com, indicating that you do not want to be forced to activate an email in my name that has been opened without my consent", proposing the solution that the "EducaMadrid" be used.

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ANNEX 10, letter from the union representatives addressed to the Territorial Area, dated 03/1/2020, ANNEX 11, from the representatives of the workers addressed to the Directorate of Territorial area of Madrid, dated 09/21/2019.

ANNEX 17: in "EDUCAMADRID Basics" "Notices to teachers creating teams in TEAMS and deletion of GOOGLE SUITE dated 11/16/2020" from the Deputy Director. Information related to the implementation of MICROSOFT TEAMS is given. (although as It will be seen later, the Ministry-Microsoft agreement took place on 03/08/2021) "On the other hand, the

INSTRUCTIONS AND RECOMMENDATIONS ON DATA PROTECTION

PERSONNEL FOR PUBLIC EDUCATIONAL CENTERS OF THE COMMUNITY OF MADRID OF 09/08/2020, contemplate that in the management of teaching activity through the use of educational tools and platforms, centers must refrain from using non-corporate educational applications or platforms or not considered for the Counseling as complementary.

This affects the use of GOOGLE SUITE FOR EDUCATION as an educational platform. By not The General Directorate having reached an agreement with GOOGLE, contrary to what happened with MICROSOFT, this educational resource will no longer be generally available for the teachers of the center and will proceed to the elimination of the accounts that still exist.

Those teachers who want to have an account in the domain eoijesusmaestro.es, for the purposes of your personal use as a teacher (unlimited storage of materials didactic in the cloud, calendar management, blogs, etc.) must expressly request it from through the corresponding virtual classroom form, no later than November 27."

ANNEX 18: general communication from the Data Protection Delegation, dated May 2020 on "USE OF GOOGLE FORMS TYPE FORMS FOR PROCEDURES OF STUDENT REGISTRATION." on the 2020-21 academic year, in which he urges the

Addresses of the Territorial Area so that they communicate to the educational centers that refrain from designing registration procedures based on forms systems interactive from other platforms such as GOOGLE forms, because there is no limitation to treatment by platform providers, "without the existence of a contract of order of data processing" and without having carried out a risk analysis for the privacy, as well as the security of the information that must be adapted to the Scheme National Security. It prescribes deletion of personal data already collected, and gives instructions to be carried out by another means, considering "said content of a administrative and must reside on corporate servers".

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), the claim was transferred to the claimed party on 03/2/2021, so that proceed to its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements established in the regulations for the protection of data.

On 04/06/2021, this Agency received a written response, indicating:

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-The processing of personal data to which the claim refers corresponds to activities data for which the DGESFP and RES are responsible, participating in the determination of the purposes of the treatment, although the determination of the guidelines for the use of the platforms for educational purposes is the responsibility of the GENERAL DIRECTORATE OF BILINGUALISM AND QUALITY OF TEACHING (DGB and CE), which, according to the definition of responsibility

saber of article 4.7 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 04/27/2016 regarding the protection of natural persons with regard to the processing protection of personal data and the free circulation of these data (hereinafter, GDPR); implies their co-responsibility in said processing of personal data, in accordance with the Article 26 of the GDPR." It specifies that the DGB and CE is "competent in the design of the pro-innovation programs to improve the quality of school teaching and for the preparation of guidelines for the use of computer platforms in educational centers and computer systems linked to teaching learning and updating"

The treatment activity is called:

"Management of students enrolled in educational centers that teach non-university".

-Provide a copy of Annex I, a document that does not bear a date, addressed by the DPD to three Addressees General, including the one that alludes to the entry of the claimant's brief of 02/17/2020, entitled: "CLAIM ABOUT THE USE OF EMAIL AND THE PLATFORM"

TAFORMA G SUITE, OUTSIDE THE CORPORATE TOOLS OF THE COMMUNITY

DAD DE MADRID AT THE EOI JESÚS MAESTRO-JM-" of the DPD, to those responsible for treatment, DGESFP and RES and DGDB and CE. (15 pages). In it, several aspects are referred and conclusions about each one. Teachers' claims are considered and valued the legitimization of the Director of the Educational Center, the educational autonomy and the responsibility quality of treatment in conjunction with educational competencies in the CCAA of Madrid.

Reference is made to a brief reference to the privacy notice of G SUITE FOR EDUCATION, in point 4, to the application of the privacy policy of Google and the terms of service.

Also that "the person responsible must adopt the necessary preventive measures"

to be able to identify, assess and manage the risks to which its assets are exposed.

processing activities with the aim of guaranteeing the rights and freedoms of individuals

physical nas. "The Community of Madrid, provided in 2010 some instructions for the use of the

email for users of the domain @madrid.org, fully extensible to domain @educa.madrid.org, where it is expressly stated that "The use of email email is provided by the Community of Madrid, for the purposes of communication of a employed with another(s), or with foreign persons or organizations, for the purpose of professional activity". "It corresponds to the General Directorates to determine the purposes and means god to guarantee compliance with data protection regulations, as well as such as the management, coordination and direction of their treatment. The exercise of Such competition obliges them to adopt a data protection policy of common application. common in all public educational centers, which must comply with all measures technical and organizational measures imposed by the competent management center of the Administration without prejudice to the fact that each center decides to use external and complementary tools. of the institutional ones, of whose use the person in charge must have knowledge so that can assess whether it conforms to security regulations and complies with the privacy policy privacy established by the management center". Regarding security compliance, it is copy the reference to the "privacy shield", which has been annulled since 07/16/2020 by the Judgment CJEU Schrems II, case C-311/18 Data Protection Commissioner/Maximillian Schre-

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ms and Facebook Ireland. He makes a series of conclusions and recommends to the Director of the EOI the need to leave the GOOGLE SUITE platform and use tools institutions with the installation of an official educational management platform.

- In the Official Language Schools, the corporate application "RAÍCES", used in the compulsory education could not be deployed in the 20-21 academic year, delaying its application

for the next. "For this reason, educational centers have been forced in a way

supervening, to the use of flexible tools", "certain EOI temporarily opted

by integrated general purpose software packages such as the platform

GOOGLE SUITE, institutional solution in other CCAAs, until its implementation

of the RAÍCES corporate application of the Ministry of Education and Youth."

"For not having an alternative computer application, and having caused damage

greater, the provision of the public service has prevailed over the suspension of the application."

-Alludes to the supervening situation of the pandemic and "of processes deployed in a

telematics", to the recommendation of the DPD to ask the Director of the EOI to abandon

GS and use the institutional tools, and that "a platform of

official educational management, in case the Comprehensive Management System could not be used

educational Community of Madrid: "RAÍCES",

-It also recommended to the General Directorate of Bilingualism and Teaching Quality, the

development of guidelines and instructions for the use of educational platforms

unrelated to corporate ones, which should also be included in the Instructions for the

beginning of the 2020-2021 academic year (Annex II)."

-The EOI JM, has carried out a specialized consultancy order to audit "all uses

of their information systems", not yet finished.

-The DGB and CE plans to establish the necessary use of the platforms and applications

institutions of the CCAA of Madrid, which must not be replaced in any case by other

foreign to them, being the use of these a complementary way" "If the center chooses

For including outside applications in your PGA, you must follow the protocol that will be established with

Mandatory character:

"-Inform the people affected by the use of the application or platform of its privacy policy

privacy and obtain your consent when necessary, after assessing the need

ability to host and make transfers or international transfers of data on their servers.

beef.

-Compulsorily carry out a risk analysis or impact assessment, when appropriate, and design the processing of personal data before using any application or platform.

form, establishing criteria such as the limited use of said data, trying to ensure that they are the minimum possible, favoring pseudonymization (disassociating personal data to avoid easily identifying individuals) and where possible, anonymization of the same (so that identification is impossible).

-In order for the educational center to be able to use external applications or platforms, it must certify that you have a contract signed by the person responsible for the treatment in favor of the own center with the person in charge of the treatment or company providing the service, which per-

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allows certifying that the processing of personal data is in accordance with the principles and guarantees aunts established in the GDPR.”

-The Ministry studies the possibility of establishing an agreement or any other figure that links it legally with the service provider entities whose platforms are most frequently used by educational centers, which allows obtaining a verification by the providers on the transfer and privacy of the data that really minimizes have the impact on your safety.

-Annex II, with the document entitled: "INSTRUCTIONS AND RECOMMENDATIONS ON PROTECTION OF PERSONAL DATA FOR PUBLIC SCHOOLS OF THE COMMUNITY OF MADRID", of August 2020, of the DPD with recommendations for the development of guidelines and instructions for the use of educational platforms

outside the corporate ones, which should also be incorporated for the 20-21 academic year (24 pages). Contains a table of general contents, including the section of "use of educational applications and platforms". It refers to the purposes administrative or management of educational centers, "its use is not authorized for general" "that must be carried out with the official management computer applications". Regarding "services that cannot be provided by EducaMadrid, use may be made of other complementary resources that the educational authority authorizes as such, and that will be included in the website"

"When public educational centers wish to use educational applications that do not listed in the preceding paragraphs, must request authorization and supervision from the Ministry of Education and Youth. They must refrain from using applications or non-corporate educational platforms or not considered by the Ministry as complementary that require adherence to the conditions of the service provider, and that do not allow you to sign a custom treatment contract, where the person responsible must appear of the treatment. Nor should they do so if they are not capable of guaranteeing and being able to demonstrate strict compliance with current regulations on data protection.

"When an educational center wishes to use an educational application or platform, it corporate or non-complementary must prepare a detailed project in advance on the processing of personal data that you intend to enter in them, for your subsequent privacy impact assessment and validation by D.G. of Bilingualism and Quality of Education, which will have the advice of the Delegation of Protection of data". Determine the content of the project.

It is specified that: "The application will never be used to process character data administration with legal effects, such as management of student absences and teachers, processing sick leave, economic management, evaluation of tests of partial or final knowledge or aptitude, assessment of behaviors or procedures

disciplinary procedures, psycho-pedagogical tests and any other formality

corporate confidential.”

”In addition, when personal data is processed, there must be a written contract between the

Unit of the Ministry of Education and Youth competent and the company providing the

service, which includes the purpose of the treatment, the responsibilities and other requirements

established by the GDPR in its art. 28.”

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-Annex IV, internal note from the DGESFP and RES to the General Directorate of Infrastructures and

Services and to the DGB and CE, matter "instructions on the use of computer platforms",

letter of 05/06/2020, in which it is indicated that the EOI do not have a management system

within the Madrid Digital environment, an anomalous situation compared to the rest of the

official teachings. Some of them have resorted to temporary solutions arising from

the need. Given the competence of the DGBCE... requests "send us the guidelines

of use of computer platforms other than the corporate ones they are using

certain centers as long as the computer program is not started

ROOTS that allow compliance with data protection regulations”

-As annex 5, it provides the publication on 03/30/2021 in the BOCM of the Collaboration Agreement-

resolution of 03/08/2021 between the Community of Madrid and MICROSOFT IBÉRICA SRL to improve

digital competence in the educational field with the OFFICE 365 environment, as a complement

ment to the corporate tools of the Department.

THIRD: On 04/8/2021, the claim continues, in accordance with the provisions of the

paragraph 5 of article 65 of the LOPDGDD.

FOURTH: It has been learned that it is published in the BOCM of 06/24/2021, the Collaboration agreement of 06/10/2021, between the Community of Madrid (Ministry of Education and Youth) and GOOGLE IRELAND LIMITED, to contribute to the improvement of the digital competence in the educational field through the use of WORKSPACE FOR EDUCATION, which highlights:

- It is configured as a complement to the corporate tools of the Department to be-Tools that integrate information and communication technologies in the process education, as a complement to those that make up the EducaMadrid corporate platform.
- The use of the basic version of Workspace is made available to teachers and students For Education, through the conditions agreed between the parties in the license and lending provision of services implemented in the treatment manager contract, that the respondent sable, the Ministry has carried out a risk analysis.
- It is indicated that the services are regulated by the following agreements, incorporated into the this Agreement:

“— The TERMS OF SERVICE agreed by the parties regarding the use of Workspace for Education, which are included as Annex II to this Agreement and which will also be published in EducaMadrid (“Workspace for Education Terms”). Establishes the terms of service, among which stands out:

“1.2. Administration Console. The Customer will have access to the Administration Console tion, with which you can manage your use of the Services and manage User Accounts. end users and other functionality of the Services. The Ministry shall: (a) administer End User Accounts through the Administration Console; and (b) determine the Services to which End Users will have access.

1.3. Accounts and Verification to Use the Services.

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(a) Accounts. Customer must have an Account to use the services and is responsible of the information provided to create it, as well as the security of the passwords of the Account and any use made of it. Google is under no obligation to provide create several Accounts to the Client.

(b) Verification to use the Services. Customer must verify a Co-address Domain Email or a Domain Name to use the Services. If the Client you do not have a valid permission to use that Domain Email address or not owns or controls that Domain Name, Google shall have no obligation to provide the Customer Services and may delete the Account without prior notice.”

— The DATA PROCESSING ADDENDUM, whose current version at the time of signing ma, as adapted in this Agreement, is incorporated by reference as Annex III.”

Section 6.5.2 b is included as an example. Regarding the Contractual Clauses

Type as described in Section 9.2 (Data Transfers), Google will allow the

Department or an independent auditor designated by the Department to carry out audits as described in the Standard Contractual Clauses in accordance with Section 6.5.3

(Additional trading conditions for reviews and audits).

The Ministry may carry out an audit to verify compliance by

Google from its obligations under this Data Processing Addendum by

review of the Security Documentation (which reflects the results of the audits carried out by Google's External Auditor).

FIFTH: On 01/03/2022, it is agreed by the Director of the AEPD:

"START SANCTION PROCEDURE for the MINISTRY OF EDUCATION,

UNIVERSITIES, SCIENCE AND SPOKESMAN of the CCAA OF MADRID, with NIF

S7800001E, (EOI) of Madrid "Jesús Maestro" (for the alleged violation of article 32 of the GDPR, in accordance with article 83.4.a) of the GDPR and for prescription purposes in the Article 73 f) of the LOPDGDDD.

For the purposes specified in the art. 64.2 b) of Law 39/2015, of 1/10, on Procedure Common Administrative Law of Public Administrations, the sanction that could to correspond would be a warning, without prejudice to what results from the instruction.”

SIXTH: On 01/21/2022, the following allegations are received:

1-When on 11/12/2019, the EOI informs that it is going to provide the new resource, the use of emails that the Senate was carrying out in the EducaMadrid domain. org was testimonial.

The action was part of the "digitization strategy" of the center, whose project education collected, since July 2019, as detailed in the PGA (general programming annual) of the academic year 19/20, the need to equip itself with advanced platforms and tools and specifically among them from GOOGLE SUITE FOR EDUCATION.

“The new accounts were created by the EOI of Jesús Maestro for strictly professional use, being enabled on 12/1/2019 -document 2-, which is a copy of an email to a

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claimant informing of the professional mail "already operational in the domain eoijesusmaestro, being able to access the mailbox directly from correo.eoijesusmaestro.es. The mail will it will continue to arrive at your personal address as well, but you will have to use this new account to access the links, folders and documents-or it will tell you that you don't have access-“. "without that the claimant or no other person alleges his opposition in the course of those weeks."

"EducaMadrid's tools had little implementation and due to difficulties in the provision of the service, with a strong rejection by the Senate, being the use of an account institution of the center with the domain eoiJesusmaestro.es, an alternative that was chosen for improvement".

On the possibility of access by system administrators to the information operating in the emails of the domain, although it exists, it is not arbitrary but "can be necessary in a purely professional context, precisely to comply with the legal requirements of the administrative or judicial authority. This ability to investigation must be configured ex profeso. Its use is strictly limited. Is left over registered in the system itself for auditing purposes. In any case, this configuration was not applied in the school. Provide printing of the application, document 4 about the instructions "use the research tool to see the content of Gmail messages". It is about adjusting the configuration of the tool, indicating that it is must provide a written justification for viewing the message, which remains logged in the administration console audit log.

2-"A report from the Director of the EOI of 03/2/2020 where the justification of the adopted tools is detailed and in particularly the application to the contract previously signed by the center in November 2019 of the standard contractual clauses endorsed by resolution of the AEPD of 06/22/2017".

3-"In July 2020, the decision to abandon the managed domain accounts in GOOGLE WORKSPACE". "Since the beginning of the following school year in September 2020, the use of the Education platform increased. caMadrid, using only its virtual classrooms for the internal management of the center and directing I send communications to teachers exclusively to these institutional emails. The definitive elimination of teacher accounts in the school domain —whose use, on the other hand, it was never exclusive or a substitute for the use of those of EducaMadrid— it was pro-

dropped in November 2020, as soon as the incident management center for Microsoft Teams of the Ministry was operational and it was possible to request the registration or restitution of those users who did not have access, as well as the creation of teams.”

4- Taking into consideration the detailed authorization process, the EOI JM started in February 2021 "a consultancy" of the non-corporate applications in use, taking into account the "instructions and recommendations on the protection of personal data for centers public teachers of the Community of Madrid", in its September 2020 version.

finalized, in June 2021 it was presented to the General Directorate of Bilingualism and Quality of En-teaching. Provide document 8 to (46 pages) "request for use of educational tools outside the CCAA of Madrid" for the continuation of academic use of the platforms after

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described in the document, among which the GS version “Fundamentals” is included
tals” to which the migration would occur.

The document indicates: "The agreement entered into between the Co-Community of Madrid and Google to include Google Workspace solutions, in its modabasic quality, within the catalog of complementary applications to EducaMadrid. Al carestill have details of the aforementioned agreement, but taking it into account, we request authorization to continue the use of Google WorkSpace for Education, based on the sections described below. . The document is undated and bears the logo of the EOI JM.

There is a section referring to the "use of the GS application with servers other than those of EducaMadrid", since 2019, because the Ministry gave courses and recommended the application

tion, students are used to using these tools, it is not necessary to learn

its use, is a complete suite with different integrated functionalities, not like that of Edu-

caMadrid, and "reasons why EDUCAMADRID tools do not cover our

necessities" mentioning among others: the lack of integration of the videoconferencing tool

ferences with the rest, the user experience and the online training platform through

of the class system is hardly usable, it lacks online collaborative office applications.

nea, lack of integration with online office systems of the virtual classroom in the application

"MOODLE", as well as another section on the benefits of GS applications for education.

cation.

Indicates that the risk analysis of the treatments carried out in GS has already been carried out.

Data processed with GS includes name and surname and the class or group, related to the

"development of distance classes", does not allude to the use of academic management or the relationship between

the center and teacher-students, indicating that the use of teachers is to generate

formation of classes and association of students to classes.

In a table, it provides by columns on the "data processing operation by use of

GS", the "identified risks", the "implemented measures" and "observations", Thus, it appears:

The legitimizing basis consists of "express consent".

He mentions the measures applied by GS as a provider of cloud services, alludes to as-

pects of risk in the treatment in terms of transparency, group affected and type of

data, but these mentions, such as the "data location" or the "conservation period"

They refer to the GOOGLE page, they do not detail how they work or specify the measures

related to them in terms of guarantees for those affected.

It is indicated that the center "makes available to all students and teachers a

GS, whose use requires the express acceptance by the users, included in the document

minio @eojesusmaestro.es"

"As a measure, migration to the GOOGLE WORKSPACES environment is foreseen Fundamentally

tals, in case of refusal to authorize the Enterprise version", although the agreement sus-

Crit is the "basic" version.

5- "The center temporarily adopted GOOGLE WORKSPACE for education, version

Standard in April 2021 to guarantee data processing in the Economic Area

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European". "This without prejudice to the fact that already in August 2020, after the end of the privacy shield

ity, Google would have adapted the standard contractual clauses in the protection addendum

data (document 9) consisting of an informative email from GOOGLE to the EOI

subject: "GS/ Cloud identity data processing amendment updated to address the

nullity of the EU-US Privacy Shield" in response to the CJEU judgment of

07/16/2020", noting that from the console administration it may have been accepted

due to the updates that are carried out from time to time, and if it has not been adopted, it is cli-

than to accept them

"After all the actions taken, the only email accounts @eoijesusmaes-

tro.es still operational are those that correspond to members of the management team (7), departments

didactic elements (21) or other specific functions that are not covered in the platform.

ma from EducaMadrid. However, the internal rules of the center of December 2020 do not

establish that the personal data of those affected by COVID be directed to these accounts,

but only that the occurrence of the case and its completion be reported. The communicate-

planned distribution of the data of the affected person and classmates who could have been con-

close contact is done through class lists, which are documents that are kept

jan on paper". "An example of correct use of this type of notice is attached, carried out

precisely by the claimant, and of the subsequent interaction, in which identification is avoided.

notify people" (document 10), email dated 02/24/2021, in which

mentions the matter of a student who tested positive, only referenced by the classroom and the language that study.

6-As an assessment, it ends by indicating that "All the documentation was collected in a unified way- pertinent authority operating in the centers and the necessary guidelines were established to the immediately following academic year. This action was specifically taken to all management applications used instead of ROOTS."

"In the specific case of the Madrid-Jesús Maestro EOI, it was immediately verified that the contract signed for GOOGLE WORKSPACE was in accordance with the purpose and formality of the models that had been presented to the directors and had been discussed in the dissemination sessions of the tool organized by the General Directorate of Bilingualism and Quality of Education, since it intended to advance in the digitization of management of the center and incorporated the necessary clauses and addendum to make the ga-contributions provided."

From the moment of the claim, an iterative and continuous process has been carried out improvement of the organizational framework to ensure better data processing in accordance with the GDPR. The determinations reached and the actions to improve compliance

Derivatives are not restricted to the area in which they start, but extend looking for their

fully effective throughout the educational structure. Just a few weeks after the re-

clamor, new standards of general application are published in all centers for the

adoption of external applications. These instructions represent a paradigm shift and

establish for the first time a detailed procedure for prior authorization by the

responsibility, as well as a centralized and non-distributed verification and documentation process.

buido.

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7-Provides as document 5 the "instructions for the use of applications other than those of the Community of Madrid", which contains the reference to its publication on the page madrid.org, instructions bearing the signature of 02/21/2020. It is indicated that "it must be established procedure that requires requesting authorization from the Center for the use of these Applications. A request for authorization will entail the evaluation of the application from the point of view of information security and the consequent authorization or denial by the Center"

"the design and restrictions on the contents that are going to be incorporated into the applications, will take into account in the first place the privacy of personal data, and will include a assessment of the need to dissociate or anonymize the information, especially when there may be transfer of data to third parties or international data transfers.

All of this must be documented. The center must establish a procedure so that the center does not use applications external to the Ministry without authorization. express location of the address. "

"Once the use of an application has been authorized by the educational center, it shall The justified use of the correspondences must be included in the Annual General Programming of the course. teeth platforms or external applications, after checking that they comply with the privacy policy required by Regulation (EU) 2016/679 on Data Protection, de- while incorporating clearly defined information on the treatments carried out, the purposes of the same and their managers, as well as the location of the data, the retention period, and guarantees in relation to its security. Such information must be able to consult

It is convenient that the public centers of the Community of Madrid obtain the approval for the use of external educational applications by the data controller, that is, the competent General Directorate (primary, secondary education, etc.), with the assurance advice of the Data Protection Delegate.

When the application is going to have a use that is not strictly educational, or when, even being for educational use, data from special categories will be incorporated into it (such as health or biometrics), the center must obtain the consent of families and/or students regarding the use of said application. In any case, whether it is necessary consent or not, the center must inform families and/or students about everything indicated here”.

8-Provides as document 6 "Recommendations Centers uses of applications outside of EducaMadrid", which contains the reference to its publication on the madrid.org page, instructions that bear the signature of 05/5/2020, with , "Madrid, April 2020", which has as object, that "before the use of new technologies in classrooms, the need arises to adopt in educational centers more robust security and privacy measures than those have been applying up to now" He alludes to the importance of the use of "distance modality" as well as their permanence after the return to normality as "substitutes for procedures traditional methods for teaching", use of strictly essential data, avoiding introduce subjective data, avoiding citing any other information such as health data, that the director of an educational center is not responsible for the treatment, on the educational applications, "educational centers must request prior to their use the authorization of the person responsible for the treatment, and its authorization will entail the evaluation of the application from the point of view of information security and privacy of users.

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personal information". After authorization, the center may approve its commissioning.

functioning. It indicates that "health or performance data should never be entered

school in clouds outside the organization, seeing the tools used

information provided by the person in charge". It mentions the platform in a section

of the CCAA of Madrid, EducaMadrid, "provided with adequate measures of

security and in accordance with data protection regulations.

It contains, on the use of external educational applications, the same points referred to in the

"Instructions for the use of applications outside those of the Community of Madrid", in which

containing the reference to its publication on the madrid.org page, instructions that carry

signature of 02/21/2020"

9-Provide document 7: "instructions on the Protection of Personal Data for

public educational centers of the Community of Madrid 2021-2022", version 2.0,

11/22/2021, which is a general guide on the processing of educational data in which

includes a section on "use of educational applications and platforms" in which it is indicated

that "In general, the use of platforms or tools is not authorized

educational purposes other than official digital management applications for purposes

administrative or management of educational centers, which must be carried out with the

official digital management applications and that requires students or their representatives

legal entities have the necessary access to also interact digitally in

the procedures in which they must intervene."

10-In document 8 b: that does not bear a date, version or edition, nor its author,

referring in general to the "EOI Jesús Maestro Security Policies" of 38

folios.

SEVENTH: On 06/8/2022, it is agreed to open the practice period for tests,

practicing the following:

1. The claim filed and its

documentation, the documents obtained and generated during the admission phase to processing of the claim, and the report of previous investigation actions that form part of procedure E/02264/2021.

2. Likewise, it is considered reproduced for evidentiary purposes, the allegations to the agreement of start, and the documentation that accompanies them.

3. The defendant is requested to provide the following information or documentation requested:

How did the mail for professional relations work in EDUCAMADRID,

3.1)

in the EIO? Use that it had in relation to the management of teachers and other staff of the EOI JM.

A response was received on 06/30/2022, indicating that: "In December 2019, all public centers

Governments of the Community of Madrid could use all EducaMadrid services, among them professional mail, both for teachers and students. As a public center

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The EOI Jesús Maestro had professional email available for the relationship with the management of the teachers and the rest of the staff of the EOI Jesús Maestro.

At the date of assumption of functions of the new director of the EOI Jesús Maestro, 07/01/2019,

the implementation in the center of the use of EducaMadrid services, including mail

email in the domain @educa.madrid.org, was very scarce and merely testimonial. He

The bulk of professional relationships were carried out through paper mailboxes, and

occasionally through personal emails provided by teachers. In

Consequently, the new management of the center decides to avoid the use of personal addresses due to the risks that this entailed and improve security conditions by adopting the use of a common tool with the necessary guarantees. In a context of strong rejection by teachers of the use of EducaMadrid tools (attempts to use by claimants of their own personal addresses are documented in two in the allegations presented, document 3), the address of the center, in line with the Educational Project of the Center, and as was publicly stated in its PGA, he bet for the adoption of the tools of Google Suite for Education, as a transitory solution estuary."

3.1)

Reason why it was not operational, or was not used as a management tool professional email that EDUCAMADRID had for teachers at the EOI JM, in December 2019. Date on which the EOI of Madrid began to indicate the lack of platforms online to manage their functions. Report, if the General Directorates are responsible You were aware of the implementation in December 2019 by the EOI of the application GOOGLE SUITE, how did they find out and when, and if they offered more technical data or so on data protection regarding its implementation.

He states that "the functionalities of the EducaMadrid platform were, at that time, much inferior to other standard tools in usability and operability. For example, they did not support online cooperative work on the same document. mailboxes emails were very small and the antispam filters hardly filtered any threats, which often In turn, it was perceived as something that could generate greater risk than the use of tools. corresponding industrial range. In the annex to the allegations Doc 08a – "Request of use of educational tools outside the CCAA of Madrid" , the deficiencies are detailed detected in EducaMadrid and the alternative solutions proposed together with the study of

its impact and form of adoption and use.

Currently, the EducaMadrid platform has been significantly reinforced, giving solution to those situations.

“The Official Language Schools were taken into account from the very implementation of the "Raíces" system, although the complex substitution of the previous institutional system, SICE, by volume of centers, type of education and number of students, caused a delay in its implementation, which mainly affected non-compulsory teachings, among which are those offered by the Official Schools of Languages.

On the date of adoption of the tool by the school, in 2019, the centers did not they had an obligation to communicate or request authorization to do so. All these procedures These are progressively reinforced with the successive versions of the recommendations and instructions to centers on data protection, which are listed under the question

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correspondent. The Data Protection Delegation of the Territory Area Directorates

Rial is aware of the use of this tool through a query in February of

2020. After its analysis, it adopts the decision to treat it as a claim and initiates a

process that culminates in a letter in May 2020 from the DGESFP and RE to the management of the educational center urging him to make an orderly transition to leave this he-

tool in favor of other corporate tools or approved as complementary.

As it cannot be otherwise, the transition must be carried out while maintaining the service education and in the context of distance learning that occurred as a consequence of the health crisis caused by Covid-19 and other implications and restrictions motivated

due to the state of alarm.

At that time, more information is also offered to all centers about adoption.

and measures for the implementation of Microsoft Office, having completed the corresponding agreement with the then Ministry of Education and Youth, although this was not the case with respect to the

Google Suite tool, as the formalization of the agreement takes longer in this case. No

However, the General Directorate of Bilingualism and Teaching Quality, within its activities

promotion of the tool, it had already deployed in a sustained manner a

series of training actions for the management teams of the centers, some of them are

especially focused on compliance with the GDPR”.

Report which solutions the EDUCAMADRID application contained and offered in 2019

3.2)

for the administrative management of educational centers, and specifically the EOI of Languages Je-

sús Maestro, in terms of professional relationship teachers, center and student teachers. In-

form, later, which system was chosen over educational applications in the EOI, when

When the Ministry approved the agreement with MICROSOFT first, and with GOOGLE SUITE after

well.

“EducaMadrid is an educational platform, it is not an administrative platform for the centers.

ers, the administrative management of most of the centers is carried out through the application

tion ROOTS.

In the EducaMadrid Platform, there was only an administrative application for the

Interested parties may request access to "free language certification tests". The al-

The scope of this application only included the submission of applications electronically. Inter-

Naturally, lists were generated that the schools involved could extract and whose information

tion could be provided by the centers themselves to those interested. This app worked

during the academic year 19-20”.

“Once the necessary developments in RAÍCES have been undertaken, the EOI have started

started to use it in the 2021/2022 academic year, and have stopped using their own applications that used for administrative management.”

It exposes the services that the educational platform EducaMadrid had in 2019, among others, the following:

Professional Email for both teachers and students.

The Virtual Classrooms, virtual teaching and learning space for teachers and students in where you can create courses with resources, forums, instant messaging, evaluate lessons, tasks and activities, taking exams...

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Services for the creation of Web Pages for personal spaces of teachers, departments, classes, virtual communities and educational centers

The Cloud, which is a virtual hard drive where you can save and share folders and files that allows collaborative office editing.

The Media Library, which is a space where all kinds of content can be stored multimedia (videos, photos, audio, documents, etc.) to be able to share easily and safe.

The Forms, which is a data collection service.

The Newsletters, which is a service to send relevant information in a quickly and easily by saving the submission in a URL to access it later.

These services are fundamentally educational, only email has also an administrative use for communication between the center and the teachers, and between the own teachers. However, EducaMadrid did not contain and does not contain specific solutions

management cases (relational databases, concurrent access spreadsheets, more organization and processing workflows, etc.). In short, the use of EducaMadrid is geared towards teaching and administrative management has made available location of the ROOT centers.

This drive to digitize the center was undertaken before the conventions were held.

corresponding children, which due to their high regulatory level were only held after the need since the pandemic emerged. As already indicated and following the instructions of the DGESFP and RE, the center began a gradual and orderly withdrawal from the use of the tool Google Suite subscribed prior to the agreement, subsequently seeking its adequacy the framework of the new agreement or even its complete authorization through an audit of their information systems and the presentation of a request for use before the General Management General of Bilingualism and Quality of Teaching. On the other hand, the use of Microsoft for Education was only implemented within the framework of its specific agreement and its tools were used. They were used only in the educational field and, in general, for videoconferences”.

3.3) What relationship exists between the comprehensive educational management system of the Community of Madrid RAÍCES, and EDUCAMADRID, and which system or application governs the administrative management internal electronic treatment of the centers, in terms of teacher-center, teacher-students, students center. Date of implementation in the EOI of Jesús Maestro del sistema of Integral Educational Management RAÍCES and what relationship would it have with the facts object of the claim.

“Raíces and EducaMadrid are different systems, with complementary scopes and orientations. rias, management in the case of Raíces and education in EducaMadrid. These orientations of each platform are maintained in the three areas of relationship (teachers-center, teachers-res-students, school students). Each platform has its own identification credentials. tion and each center or type of education could make a different use of them. The implant-Raíces training at the Jesús Maestro center begins in November 2020, this being

school where the start-up of this computer application was addressed in a pilot way;

in fact, its establishment being generalized already at the end of that same academic year 2020/2021 in

the set of Official Language Schools. In that sense, this and other claims

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highlighted the need to speed up the implementation schedules of the systems.

management units dependent on the General Directorate of Infrastructures and Services, and the

authorization procedures and use of other non-institutional applications, dependent

of the General Directorate of Bilingualism and Teaching Quality, as effectively

He has been doing and acting in each case.”

3.4)

Form of signing the EOI JM the contract with GOOGLE SUITE, version within the

contracted solution (Fundamental/Enterprise). Date. Copy of the signed contract and

addendums, if any, and how they arranged or configured to receive updates.

nes of the contracted versions. Inform if the EOI consulted if it could subscribe and accept

the use of what is derived from said contract with a hierarchical or functional superior for reasons

of the matter, and if there were previous regulations that dealt with this aspect in the Ministry.

If the EOI or the person in charge of the treatment carried out a previous study of the risks of treatment data lie.

The response is limited to the signature made by the Ministry of Education on 06/10/2021, with

Google Spain, and to indicate that "together with its commission agreement, the

corresponding risk analyzes and impact assessments attached as DOC

1, 2 and 3 to the present writing.”

3.5)

Report on (when the events occurred, end of 2019) who decided what to apply computer or management information to be used for internal academic use of class management in an educational center such as the EOI JM, under what criteria were used, reports that were requested taban or request, and information that is provided to teachers. Reports on protection tion of data that are incorporated and if analyzes of risks of treatment and compliance are carried out. regulatory compliance.

He responds that "When the tool was adopted in the EOI, it had not articulated a procedure specific procedure that limits or directs the autonomy of organization and management of the educational centers, enshrined in higher order legislation, nor were reports requested by the General Directorates. Decisions in this area were still the usual processes of autonomy in the educational sphere, with the participation of the Claus- of Teachers, the School Council of the center and the Director. In the particular case of the Official School of Languages, all these procedures were fulfilled and the adoption of the tool This was dealt with in depth in the Senate on 12/13/2019, answering the questions that were produced and also providing links to additional sources of information"

Provide a copy of the record of processing activities of "Management of students ma-

3.6)

enrolled in educational centers that provide non-university education". Indicate if that registration covers the wide range of treatments derived from the use in its day or in the present- ity, in the EOI of GOOGLE SUITE, otherwise another definition and description of another record of the operation more suitable with this computer solution.

It states that "it is located at: [https://www.comunidad.madrid/gobierno/informacion-juridica-le-](https://www.comunidad.madrid/gobierno/informacion-juridica-le-gislation/data-protection#registry-activity-processing) legislation/data-protection#registry-activity-processing. In it it is indicated that the

The legal basis is article 6.1.e) of the GDPR "the treatment is necessary for compliance with of a mission carried out in the public interest or in the exercise of public powers vested in

to the data controller. GDPR 6.1 a) the interested party gave his consent for the processing

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processing of your personal data for one or more specific purposes” Purposes of Treatment

Management of educational, complementary and extracurricular activities of students

enrolled in educational centers that provide non-university education” In transfer-

international data references “no”, although the DPIA need analysis included

yes.

It also provides the record of “Use by teachers and students, in the

exercise of the educational function, tools and non-corporate resources”, responsible:

“General Directorate of Bilingualism and Teaching Quality”, Legal Basis “RGPD 6.1 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” “Purposes of the

Treatment Provide students and teachers with online learning environments, as well as

such as communication tools (educational email, instant messaging,

etc.), collaboration (cloud, websites, forums, etc.) and the development of educational materials

(content manager)” Purposes of Treatment Provide students and teachers in-

online learning turnstiles, as well as communication tools (email

education, instant messaging, etc.), collaboration (cloud, websites, forums, etc.) and elaboration

elaboration of educational materials (content manager). Internal data transfers-

tional No. In security measures, only alludes to the ENS.

3.7) Yes, knowing the lack of tools due to the delay in the computer application

RAÍCES for the EOI, the person responsible for the treatment or co-responsibles, analyzed the application

GOOGLE SUITE information regarding security, operation and data transfer

data.

He alludes to the "difficulty" with which we find ourselves in the Community of Madrid and

that due to its population density there are currently around 1,800 educational centers

public captives and more than 80,000 teachers, which makes quick and agile management difficult. No

However, those responsible for treatment have acted with proactive responsibility and in

when it was detected, with the advent of the new European regulations, that educational centers

public were using computer applications such as GOOGLE SUITE, they adopted

the appropriate measures to formalize an order contract in accordance with article 28 of the

GDPR, once the risk analysis and the Impact Assessment were carried out, when affecting a

group of minors In this way, the Ministry of Education signs on 06/10/2021, a

Collaboration agreement with Google Spain for the use of Google Works services-

pace for Education in public centers of the Community of Madrid, through the account of

EducaMadrid email.

3.8)

In the official approval of the computer solution of the aforementioned GOOGLE SUITE, which

was contracted and published in the BOCM, it is indicated that: "It will correspond to the Ministry established-

Establish the limitations that users must abide by when using the services

offered by Google, which will be those that are inferred from the risk analysis of the treatment.

processing of personal data carried out by the Department"

It is requested that you provide a copy of the risk analysis referred to in the Agreement regarding

is related to the use of user accounts in GOOGLE SUITE that could affect

the information processed, storage and confidentiality when completing documents

ments and are sent through said medium for academic and student management.

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"Information related to the Risk Analysis and Impact Assessment carried out is attached.

prior to the signing of the Agreement as DOC 1, 2 and 3 already referenced before.

In addition, the link to the EducaMadrid page is attached <https://www.educa2.madrid.org/>

resources, where the provisions of the established collaboration agreement are complied with.

establishing the appropriate limitations of users when using the services offered

by Google, as well as the privacy policy in compliance with article 13 of the Re-

General Data Protection Regulation.

In the document GUIDELINES FOR THE USE OF GOOGLE WORKS SERVICES-

PACE FOR EDUCATION IN PUBLIC CENTERS OF THE COMMUNITY OF MADRID,

that was published on the Educamadrid website is clearly and concisely established

that all users with access to the services will comply with the following general conditions:

nerals:

□

The services and applications to which users will have access will only be used

strictly for educational purposes, not hosting in them any academic or

student progress in the educational system.

□

The "Drive" application, which allows storage, will be limited to educational purposes and

of teaching, not being authorized its use for other purposes such as administrative functions

or management. It should also not be used to host personal information not related to

directly with the educational or training activity, nor to house documentation with

effects on academic history (test scores, job grades,

etc.) or student progress in the educational system, as indicated in paragraph

former.

Google email services (Gmail) will be disabled for all

□

das user accounts, whatever the profile. It will be mandatory to use Edu-
caMadrid.

□

tions of the Platform, may not contain personal data.”

All the information that can be publicly visible, in any of the Applications.

About: "INSTRUCTIONS ON THE PROTECTION OF PERSONAL DATA

3.1)

FOR PUBLIC SCHOOLS OF THE COMMUNITY OF MADRID", of the

Ministry of Education, Universities, Science and Spokesperson of the CCAA of Madrid, fe-

dates of the successive existing versions signed by the DPD, and what was or is the channel

established so that these instructions come to the knowledge of the educational centers.

“The first version is from September 2020 (DOC4), the second from November 2021

(DOC5), which was sent on January 21, 2022 to the AEPD as annex 07 in this

disciplinary procedure and the third version (DOC6) was carried out due to the request

of the AEPD to this Ministry of Education, Universities, Science and Spokesperson

on the occasion of the resolution of the disciplinary procedure PS00412-2020 to advance

Cuase the information on the recording of the sessions of the evaluation boards in the

schools. The latest version of the Instructions with new information incorporated-

given in section 11, was notified for dissemination among the different management units

and for publication on the respective web pages of the five Territorial Area Directorates.

story.

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Likewise, they were sent for notification to all their affiliated educational centers with the so that from their address they communicate personally to all the members of the Faculty and other members of their educational community who consider necessary to inform, with the recommendation that they have them published in an accessible place. ble, like the Virtual Classroom (DOC 7 to 16).”

From the document prepared by the DPD "USE OF OTHER APPLICATIONS

3.2)

A LAS DE LA COMUNIDAD DE MADRID”, versions that have been updated since their approval to the present, what motivates the variations, and what fact or circumstance originated the issuance of the first version. Date on which its publication on the web began. Additional- mind, that other means were used to make the same known to the educational centers.

“This document was prepared by the Data Protection Delegation and published by first time on our website on 02/13/2020 (DOC 17). On 04/23/2020, the

A second version was published, which is the one that remains published until now (DOC 18). Moti- tive of the publication of the first version, as indicated in its first paragraph was the publication cation of the REPORT ON THE USE BY TEACHERS AND STUDENTS

US OF APPLICATIONS THAT STORE DATA IN THE CLOUD WITH THIRD PARTY SYSTEMS TO THE PLATFORMS, which gave rise to many consultations in the Delegation for the protection of data, whose main answers were poured in this version. The second version was related to the massive and free use that educational platforms provided to the centers in full confinement due to the pandemic and whose use was recommended to comply comply with the data protection principles of article 5 of the GDPR.”

No other means were used by the Delegation to publicize massively

this document, although reference was made to it in the consultations carried out by the centers educational institutes, teachers or parents, related to the use of third-party applications. No However, after the publication and dissemination of the first instructions included in this matter in its section 6, it can be considered that the information contained in the document It has been sufficiently disseminated by this other means.

Regarding the document approved on 06/4/2019, "Decalogue of good practices in the 3.3)

use of educational applications", which is requested to be sent with your signature, also inform how it was disclosed to the educational centers and its existence was specifically notified to the EOI JM:

The document" was prepared in a joint collaboration between the General Directorate of Bilingualism and Quality of Teaching and the Delegation of Data Protection. He

The document was not signed as it dealt with recommendations for the centers very early in the application of the then, new regulations in

Data Protection. Dissemination was made through the Territorial Area Directorates so that in turn, dissemination to all public educational centers in the Community of Madrid. Attached as DOC 19.

3.4)

In response to the transfer, he provided a copy of Annex I, an undated document, titled side "CLAIM REGARDING THE USE OF EMAIL AND PLATFORM"

FORMA G SUITE, ALIEN TO THE CORPORATE TOOLS OF THE COMMUNITY

DAD DE MADRID IN THE EOI JESÚS MAESTRO" of the DPD to those responsible for the treatment

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ment, DGESFP and RES and to another General Directorate. (15 pages). It is requested to certify the faith-
date of said letter and the date of delivery to the addressees.

“This document was signed on April 6, 2020 and sent on the same date to
all those responsible for processing personal data in the Ministry, related
with the use of said tools, that is, the General Directorate of Bilingualism and Quality
of Education, the General Directorate of Infant and Primary Education and the General Directorate
Secondary Education, Vocational Training and Special Regime. It is accompanied by
signed document and referrals to recipients (DOC 20 to 24).”

3.5)

According to the allegations made, the determination of the guidelines for the use of the
platforms for educational purposes, the General Directorate of Bilingualism and Cali-
of Education, and the General Directorate of Secondary Education, Vocational Training
nal and Special Regime participates in determining the purposes of the treatment. Which one of
the two Directorates is the one that analyzes the risks of the applications in terms of protection
of data, evaluates the clauses that are subscribed and writes the instructions for those in charge
two data processing that are managed in, for example, GOOGLE SUITE.?

It states that "It corresponds to the General Directorate of Bilingualism and Quality of Teaching
dance analyze the risks of the applications in terms of data protection, assess the
clauses that are subscribed and write the instructions for those in charge of treatment.
cough. Likewise, it corresponds to write the guidelines of use for the users to whom it is going.
intended for use and published, and to the General Directorate of Secondary Education, Formation
tion Professional and Special Regime the application of the guidelines regarding the use of ap-
educational cations

3.6)

Provide a copy of the report of the Director of the EOI of 03/02/2020 detailing the
justification of the tools adopted and in particular the application to the contract prior to

signed by the center in November 2019 of the contractual clauses type guarantee

ladas by resolution of the AEPD of 06/22/2017.

Attached as document 25: "report on management and communication tools"

tion in the EOI Madrid Jesús Maestro", at the request of the Director of Territorial Area of Madrid

capital, dated 03/02/2020. It can be highlighted:

-“Management field: Unlike the educational field, all relationships and communication

that occur in the field of management belong to the professional or work domain, and

No students or minors are involved in them. Fundamentally, it is about assessing

the capacity of the center to adopt certain work tools, establish the

mandatory nature of its use within the framework of labor relations, and assess its suitability

for the organization as a whole.”

-"The personnel at the service of the administration have an obligation to interact electronically-

mind with it, also at the level of educational centers.” He cites article 14 of the LPCAP. “

educational centers have autonomy to establish their own procedures and systems.

more management, always within the mechanisms provided for this purpose and in compliance

of the laws.” “the technical means deployed in the EOI of Madrid-Jesús Maestro form

part of the management solutions actively promoted by the Educational Administration

of the Community of Madrid, and that have been introduced with the necessary logistical support.”

“As public employees, we must attend in each case to the access and compliance system.

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documentation of the procedure established by the competent administration in its field of

performance.”

- "The functionalities of EducaMadrid are primarily designed for educational use.

tive, between teachers and students, so its benefits are very insufficient

for efficient administrative management. For example, they do not provide a tool

unified office automation tool for the storage, access and collaborative editing of different

all types of documents. In general, given the diversity of administrative processes that are

carried out in the center, from the publication of information on the Internet to the management of

files or the completion of the most diverse information, it is not reasonable to

It is rare that all of them can be carried out from a single interface or unified management system. HE-

it will be necessary to have several systems, each with its specific user identifier

(which can sometimes provide an email account at the same time) and for your

particular application bit.

- "Within the autonomy of management within the framework of current legislation to prepare

approve and execute its own rules of organization and operation, the Organic Law 2/

2006 of education establishes this autonomy of the centers and article 132 establishes that

its approval is the responsibility of the Director. The educational project of the center includes litera-

The adoption of world-class tools is one of its organizational goals.

such as Google for Education and Microsoft Education".

- "The motivation and suitability in the selection of the means deployed must be examined

to date." The Google Suite for Educational platform has been implemented worldwide.

dial and uses tools that are de facto business standards in each of its

fields. In recent years, its use in educational centers has been promoted by the Administration

Educational Tration of the Community of Madrid. Regarding data processing, compliance

Compliance with the directives and regulations is endorsed by the Spanish Protection Agency

of data. Finally, its implementation in the center has been carried out progressively

and accompanied by written and audiovisual technical support."

-Reviews activities of the "Territorial Center for Innovation and Training" (CTIF) entity that

Its purpose is to carry out training activities aimed, preferably
mind, to teachers related to GS, since 2015 in holding courses of
GS in the educational field.

-Indicates that to access the applications offered by GS, for free, you have to start
perform a validation process," having to certify that we are an educational institution
nonprofit". "Regarding compliance with the GDPR, it refers to a resolution of the
AEPD of 06/22/2017, the information offered on its page, and other information on reduction
whendo (partner of GOOGLE FOR EDUCATION).

-"The user's email account in the domain eoijesusmaestro.es, is also the way to
uniquely identify in all G Suite system applications, and to discriminate and
give you access strictly to what you are authorized to do." "They have not been created in this
user platform for students or minors. It is being used exclusively
within the scope of the organizational management of the center.", and considers that they do not imply
detriment to anyone, and represents a great leap in quality and an unquestionable improvement in the
school management capacity.

Explain in more detail the expression made in the allegations to the agreement in which

3.7)

distinguishes: "- Obtain the consent of users to facilitate digital resources,
differentiating institutional resources from Google WorkSpace for Education accounts.

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cation.", also providing a document that informs about the consent that
is requested.

"The application on the use of applications proposes to obtain the express consent of part of teachers, students, after the delivery of the policies for the use of digital resources, that collect the processing of your data, as well as the rights and duties to protect the privacy from the rest of the academic community. For this, different formulas are established. consent forms for workers and students for the use of Google WorkSpace (DOC26), as they exist for the EducaMadrid resources. Also, for ease of use of other digital educational resources in the EOI, a request form for use, to guide the evaluation of the resource prior to its adoption and inclusion in the PGA (DOC27)."

3.8)

In its response to the transfer of the claim, on 04/06/2021, it stated

Ron; "indicate that on March 30, the Director of the Official Language School of Madrid-Jesús Maestro has communicated via email to this General Directorate that "For its magnitude and that of the processes deployed for years, and as a possible case of reference to others, the center has recently carried out a special advisory assignment zada to internally audit all the uses of its information systems. This audit-

The estuary is underway and will finish soon". It is requested to report on the incident of this audit in the learning and educational management applications to be incorporated into the EOI, and report if the hierarchical or functional superior or the data controller all issued an assessment of said audit, if it has any role in it, and where it is regulate this competition.

"The audit culminates with the presentation on June 24, 2020 (possibly 2021) of a request for the use of third-party applications before the General Directorate of Bilingualism and Quality of Teaching, with registration Ref: 49/309846.9/21. The audit affects the configuration of certain platform parameters and details, among others, procedures Specific requirements for data handling (annex in allegations such as Doc 08b - Policies

of Security EOI Jesús Maestro). On the other hand, it should be noted that the competition for managing these requests is regulated in the INSTRUCTIONS ON THE PROTECTION OF PERSONAL DATA FOR PUBLIC EDUCATIONAL CENTERS OF THE COMMUNITY DAD OF MADRID.”

In the response to the transfer, it is indicated that "on March 4, 2020, the Direc-

3.9)

Territorial Area Manager of Madrid Capital has sent this Delegation a report drafted by the Director of the EOI, which explains and justifies the use of said platform and the email accounts associated with it. It is requested that you provide that document written by the Director of the EOI.

"The document is attached together with the remission by the Territorial Area Director Madrid-Capital (DOC 28 and 29)" The first coincides with the already mentioned report of the Director of the EOI JM, of 03/2/2020. The second is a letter from the Area address in which it sends on 03/4/2020 to DPD "a referral of a report, from the direction of the EOI Jesús Maestro in the that communicates the use of various GS applications and others to implement progressions vely a multitude of processes with different sectors. Indications are requested on the im-plications that could take the use of this application in the center."

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In allegations they indicated, "it is collected through the Territorial Area Directorate of

3.10)

Madrid-Capital report of the director of the Official School of Languages of Madrid-Jesús Maestro, of 03/02/2020, where the justification of the adopted tools is detailed and, in part-

cular, the application to the contract previously signed by the center in November 2019 of standard contractual clauses endorsed by resolution of the Spanish Protection Agency of Data dated June 22, 2017", they are requested to provide the aforementioned report.

"This report is the same as the one requested in the previous section (DOC 28)"

3.11)

Inform if the DPD in application of article 36.4 of the LOPDGDD has carried out any action to assess a possible non-compliance, depending on the content of their reports and the analysis of the situation and assessment based on the terms of the re-complaints received from teachers of the EOI of Jesús Maestro, Madrid. what infraction concrete?

"The assessment of possible breaches of the data protection regulations is included in the report referred to in section 3.13), COMPLAINT ABOUT THE USE OF EMAIL AND THE G SUITE PLATFORM, OTHER THAN THE CORPORATE TOOLS OF THE COMMUNITY OF MADRID IN THE EOI JE-YOUR TEACHER. However, no specific infringement was identified, although after of the Delegation it was considered necessary for the data controller to urge the EOI JM to abandon the use of the GS platform and informed those responsible (all management centers of the Ministry with competences in the processing of personal data by educational centers) about the risks of not being able to establish controls in the platform to avoid exposing unencrypted personal data of all kinds to access by from third parties, which the service provider considers legitimate (pages 8 to 12 report claim-information on the use of email and the G SUITE platform other than the cor-of the CCAA in the EOI Jesús Maestro". Likewise, he advised and raised awareness proactively so that measures were applied as soon as possible that would allow us to work in accordance with the law in all educational centers.

3.12)

In their writings, they have stated in annex 1 of their response to the transfer that

"It corresponds to the General Directorates to determine the purposes and means to guarantee the

compliance with data protection regulations, as well as the management, coordination

dination and direction of their treatment. The exercise of said competence

obliges to adopt a data protection policy of common application in all centers

public educational centers, which must comply with all technical and organizational measures

initiatives imposed by the competent management center of the Administration, without prejudice

that each center decides to use external and complementary tools of the institutions

data, of whose use the person responsible must be aware so that he can assess whether the

It conforms to the security regulations and complies with the privacy policy established

established by the management center. They are asked to inform, as is previously undertaken to the institution

tauration of the tool foreign to the institutional "having knowledge", and what it is about

This leads to having knowledge, if there is a specific instruction about it.

"The requirement to notify the General Directorate of Bilingualism and Quality of

Teaching in the use of external applications has been progressively reinforced.

In 2019 the instructions still included it as a recommendation, although for April

As of 2020, the need for prior authorization had already been formally established. In the AC-

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is regulated in the INSTRUCTIONS ON THE PROTECTION OF PERSONAL DATA

LES FOR PUBLIC SCHOOLS IN THE COMMUNITY OF MADRID

(Version 2.0), of 11/22/2021."

They end by emphasizing all the actions that have been carried out to advance in

compliance with the regulations on Data Protection.

As an example, "from the beginning, the Data Protection Group was formed, made up of

by all the Data Protection Delegates, a representative of Madrid Digital and a re-

representative of the General Directorate of Service Quality, holding regular meetings

and making a great effort to apply the regulations on Data Protection in the

scope of the Community of Madrid. As proof thereof, it is attached as DOC 30 LA ME-

MORIA OF THE YEAR 2021 OF THE WORKING GROUP in which you can see the cons-

cern that has existed in the Community of Madrid and specifically in the Con-

Ministry of Education for the use of these applications (Google, Microsoft) and the risks

charges that they entail regarding the issue of international transfers. Furthermore, it is

It is necessary to refer to the actions that have been carried out by the Ministry of

Vice Presidency, Education and Universities, since we cannot forget that at the moment

When the current regulations came into force, the educational centers had been hiring their own

educational applications since the regulations enable them and they had the capacity to contract

tar and have management autonomy, in addition to the fact that, as is well known by the AEPD

the directors of the educational centers were responsible for the processing of their data and thus

was declared in the old Data Protection files. Therefore, they were their own

GOOGLE representatives who went to the educational centers and signed directly

Mind with the directors of the educational centers contracts of educational tools.

Thus, when the current Data Protection Officer was appointed, she encountered the challenge

to modify this practice that had been carried out for years. First of all, it is proce-

declared the General Directors as controllers based on the

matter of the educational center and therefore those in charge of signing the commission contracts.

A great effort is being made to train all teachers to be aware of

of this change, but it is necessary to convey the difficulty due to the volume of which we are

We are talking about since it is about 1,800 public centers and more than 80,000

teachers

"highlight all the actions that have been carried out by those responsible for treatment- and the Data Protection Delegation with the aim of raising awareness, training and in definitively comply with the regulations on Data Protection:

A website has been created exclusively on Data Protection for

□

publicize the matter, Instructions on Data Protection, Reports, Models... everything to help the daily management of educational centers. <https://dpd.educa2.madrid.org/>

In the 2019-2020 academic year, the first PROTECTION INSTRUCTIONS were prepared.

□

TION OF DATA FOR EDUCATIONAL CENTERS to clarify queries from the centers educational and above all to give regulatory coverage to the use of educational applications, since it had never been regularized in such a concrete way or by the Community of Madrid not even by the AEPD. Instruction that are modified and improved at each academic course.

□

I lie.

Numerous advisory reports to controllers have been produced.

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A generic Data Protection mailbox has been created in which advice is given

□

to an average of 700 emails per year presented by families of centers, responsible for

treatments and students, among others...

The hours of training in Data Protection have increased considerably,

□

since in this academic year the Data Protection Delegate has participated for the first time first time in the course of trainee officials (teachers), courses have been held in the training centers for teachers, courses aimed at educational inspection, there are two courses in the training plan for public officials of the Community of Madrid in subject in Data Protection. And currently we find ourselves with the challenge of carrying out the Digital competence program for teachers in which it has been established by the Direction of Bilingualism and Teaching Quality the obligation to take at least two hours in Data Protection to all teachers in the Community of Madrid (remember which are more than 80,000 teachers).

- "the filing of the disciplinary file is requested since the res-proactive responsibility of data controllers being aware of the path that remains to be done and also being very aware of the difficulties with which we we find."

4) It is requested to the Labor Court 6 of Madrid, c/ Princesa 3 planta 2, fundamental rights XXXX/2021, plaintiff B.B.B. (with the name of C.C.C. there is one of the claims that sign the claim of this procedure Ps/286/2021) against "Consejería of Education, Universities, Science and Spokesperson" that requested this AEPD on 01/19/2022 copy "of file processed for complaint of violation of the LOPD against D.D.D. of 12/29/2020", with a response from this AEPD of 01/26/2022.

In order to analyze whether the matter pending in that Court is related to the disciplinary procedure processed by this SGID, being able to influence it, it was requested report if the aforementioned matter is still pending, the procedural situation in which it is found, and if would have been resolved, a copy of the same. If it has not been resolved, a copy of the complaint

court filed.

A response was received dated 07/07/2022 indicating that "the procedure is pending resolution on question of jurisdictional competence". Submit a copy of the claim to the Court, of 12/23/2021, in which it is indicated that a lawsuit is filed for infringement of the Law on prevention of occupational risks and violation of fundamental rights, against the Ministry of Education and Youth of the CCAA of Madrid, and the person of the Director of the EOI as well as two other people whom he identifies as Inspectors of Education. Among other labor-related issues, it informs the claim submitted to the AEPD, reproducing part of it, indicates that the director of the EOI He left his post at the end of the 20/21 academic year. The claimant requests compensation for the damage (...).

EIGHTH: On 08/22/2022, the resolution proposal is issued as follows:

"That the Director of the Spanish Agency for Data Protection directs a sanction of warning to the MINISTRY OF EDUCATION, UNIVERSITIES, SCIENCE AND C / Jorge Juan, 6

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SPOKESMAN of the CCAA OF MADRID, with NIF S7800001E, for a violation of the Article 32 of the GDPR, defined in article 83.4 a) of the GDPR, and in article 73.f) of the LOPDGDD."

Against them, dated 09/06/2022, the defendant provides:

to)

Contracts signed by the Management of the EOI-GOOGLE SUITE:

Yo.

"online contract of adherence to G Suite for Education" (Doc. 01

- 2019 07 G Suite for Education - Online agreement), in English, only

the date 07/26/2019 is printed, it is an online model in which there is no

the signing parties are not seen, nor are their names mentioned or

identification, with the following notes:

-with GOOGLE IRELAND LIMITED,

- effective agreement from the moment the "I accept" is pressed by the client,

"If you do not have legal authority to bind the client, do not accept

the click button"

-GOOGLE will provide the services in accordance with this agreement

and the SLA (service level agreement of GOOGLE

GOOGLE will provide the customer with an administrator account to

use in managing end-user accounts and other

Service features. The customer must manage the accounts

of end users with the administrator console and the

administration tools and determine the services to

provide to end users.

-Point two governs the "data processing amendment"- Data

Processing Amendment: "establishes the rights and obligations of

the parties in relation to the processing and security of the Data

of the Client by virtue of this Agreement..." Likewise, the

course to update or modify the amendment, among which are

find: conform to the regulations either by directive of the regulator,

compliance with an order or sentence or comply with the norm. TO THE

Customer information is provided through the email address of

notification or management console

- The customer acknowledges and accepts that Google is not responsible for the internal management or administration of the messaging system Customer email or messages.

“Client Administrators have the ability to access, monitor, use or disclose data available to Users within End User Accounts via the Console Management and/or the Management Tools.

Customer will obtain and maintain all consents necessary from End Users to allow:

- (a) such Customer access, tracking, use or disclosure; and
- (b) to Google to provide the Services in accordance with this Agreement.

3.5 Unauthorized Use. The client will make every effort reasonable to prevent unauthorized use of the Services, and to terminate any unauthorized use. The client will notify

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immediately to Google about any use of or access to the Google Services. those who are aware.

In the definition of "Services" there is a link that leads to a summary of GOOGLE services, now called WORKSPACE and the GOOGLE SUITE FOR EDUCATION specifics, then GOOGLE WORKSPACE FOR EDUCATION FUNDAMENTALS,

free edition, differentiating it from the "STANDARD" version, which is an update that carries an additional cost and version from which "includes the configuration of the data region policy for the main data within the Customer Data for certain Services, advanced security controls, analytics improved and Google Workspace Migrate.", also different from the edition, PLUS, formerly "Enterprise for Education". It indicates that it is composed of the services that are mentioned in GOOGLE WORKSPACE, among those related to the claim:

-GoogleDocs", "Google Sheets", "Google Slides" and "Google Forms" are web-based services that allow users to end users create, edit, share, collaborate, draw, export and embed content in documents, spreadsheets, presentations tions and forms

-"Gmail" is a web-based email service that allows an organization to run its mail system email using Google systems. It provides the ability to access an end user's inbox from a compatible web browser, read mail, compose, reply ponder and forward mail, search for mail, and manage mail to through tags. Provides spam and virus filtering, and per- allows administrators to create rules for handling messages that contain specific content and attachments or route messages to other mail servers. The rules can be configure by group or by Client (all domains).

Besides. Customers will receive 100TB of storage in

total for Google Drive, Google Photos, and Gmail combined into

all end users

ii.

the “Data Processing Amendment” G Suite

“version 2.2.” G Suite Terms of Service – G Suite (1)(eng)), the defendant calls it: (Doc.

02 - 2019 11 02 It is an online model in which the signatory parties are not seen, nor are they

mention their names or identification, with the following notes:

In point 5, data processing is indicated as described in the

treatment in annex 1, and there may be one of the roles, that of

that GOOGLE is a customer treatment manager of

data protection if the European data protection law is

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applies to the processing of customer data. In point 5.2.2

“scope of treatment”

In section 10.2 there is information on the transfer of

data.

Section 12 on Data Protection Equipment in the

cloud; treatment records

Appendix 1 "objects and details of data processing", on 2

"Security measures"

iii.

standard contractual clauses (Doc. 03 - 2019 11 02 G Suite Terms of

Service – G Suite (2)(Eng.)).

It provides a model contract "standard contractual clauses", "in charge", for the purposes of article 26.2 of the Directive 95/46 for the transfer of personal data to those in charge of treatment established in third countries that do not ensure a appropriate level of protection, identifies the parties as data exporter and GOOGLE LLC, importer. The document indicates that the parties have previously signed an agreement and a APD. It also refers again if the contracting party guarantees that has full authority to bind the entity, to link as "data exporter", data exporter, Clause 5 establishes the agreement and guarantees of the data importer.

Appendix 1 lists the categories of data that are transferred, the scope of the treatment that will be subject to the purpose of processing, to the specific period in which it is processed providing for the deletion of the data after the expiration of the term of service

Appendix 2 describes the technical security measures and organizational measures implemented by the importer, which can be modified from time to time.

iv.

Copy of confirmation email sent by GSuite, "which accredits the

The above is valid from 07/26/2019" (Doc. 04 – GSuite registration confirmation email). HE

It is an email from "The G SUITE TEAM, address Google, to the EOI JM on 07/26/2019, which welcomes you as "administrator" to GS Education, free version, showing the EOI GOOGLE account username

v.

saw.

Doc. 05 – “Updated Google data policy that confirms the receipt of updates of the security policy.

It is an email from 10/30/2019 from GOOGLE to the EOI, administrator appearing in matter update of the DPA. "HE recommends that you review and accept the update in the console Google administration”

Doc. 06 – “Licensing configuration that accredits the implementation of the version Education Plus (later renamed to Standard). “

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Provides printing of a console menu screen

Administration in which no date is seen and the sample of configuration of user licenses of the EOI of Madrid. In it section “automatic granting of licences, figure “STANDARD”, and in a tab that appears to mark "Assign licenses", consists of GOOGLE WORKSPACE FOR EDUCATION PLUS-version ancient-

vii.

Doc. 07 – “Data Regions, which includes the limitation of data processing to Europe.”

In a screen print similar to the one in the previous section,

see "data regions policy" with "Europe" checked.

b)

It states that the domain of EducaMadrid was not capable of providing within your domain addresses for the "21 departments didactic or other government positions or Administration, vice secretary, vice director, etc." for what were "these addresses the that continued to be used temporarily and residually after the cessation of widespread use of the platform", which was carried out, at the "beginning of the 2020-2021 academic year".

c)

About the first fact tested, it indicates that automatic forwarding to addresses regular users did not rule out redirection to the EducaMadrid domain itself, address to which it was redirected by default, assuming that the user "had it" effectively configured and to use" Before the contrary, it was redirected by default to the email @educa.madrid.org for all those users who had it effectively configured and to use. On the other hand, the use of e-mail was not prevented or discouraged in any way. EducaMadrid for applications offered directly by the Ministry. The alternative addresses simply gave access to a different set of applications and complementary services originally implemented in the area of the educational center.

d)

On the creation of user accounts for employees by your administration, although an initial simplicity of name and surname was offered, this was configurable and the eventual change was offered, not making any request in that sense.

and)

Through the mail, in the procedure established for the communication of cases COVID, the identity of the student was not requested in any case through the email, but only the occurrence of the case, as they consider is clear from document 10 that already appears in

allegations.

They provide document 8, a copy of the Senate meeting on 12/13/2019, in which answered questions about the tool and abounding in documents that had been sent previously, According to the reading of the minutes, it is spoken in "the turn of prayers and questions", different people who speak, expose:

- "dissatisfaction with the use of Google products in an educational center",

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- Another teacher "also asks about this use and, specifically, who works as administrator of the new mail accounts". Likewise, another person -"raises the need to respect data protection regulations".

- a person asks about the use of ROOTS, which does not seem that the administration is going to implement soon

"In this regard, the director responds that the use of Google Suite is an approved solution and already promoted for years by the General Subdirectorate of Programs of Innovation and that the administration of email accounts, which must be used exclusively professional, it corresponds directly to the center."

- document 9 (EOI address note of 12/13/2019, title "mail addresses and portal web" from which the digital transformation is transcribed:

"...The use of a user account based on a home domain,

eoijesusmaestro.es, which gives access to that information and procedures that are restricted no longer to the staff of the Community of Madrid (as it would be with educa.madrid.org), but specifically to the staff of this school, is one more step on that path. All these

processes will be collected in the new internal web portal, and that will make us more agile and

it will make us function better once we are filmed. There will also be a directory

to facilitate the consultation of addresses. And a system to give the parts of

maintenance and that it can be effectively tracked, and a mechanism to notify

to the secretariat situations such as reclassifications due to diagnostic tests and others. Also

it is more professional in terms of institutional image, and we should not aspire to less.

For these purposes, there are several platforms from different companies in the cloud; between them

both Microsoft and Google have special programs for schools. In

In particular, the Google Suite platform (Gmail, Drive, etc.) has begun to be used.

although in the future we may adopt Microsoft (Office 365) for some

needs."

-In document 10, they provide information prior to the use of the account, "which includes the

information displayed by the platform prior to accepting the use of the account for each

one of the teachers.

Regarding the decalogue, the inclusion in EducaMadrid of the pages or websites of the

F)

centers, based on the instruction of the Vice Ministry of BOCM 05/03/2004, it is not

unequivocally establishes this requirement for communication by email

"Educa Madrid",

NINETH:

documentation in the file, the following have been accredited:

Of the actions carried out in this proceeding and of the

PROVEN FACTS

1) Complainants, professors of the EOI Jesús de Madrid, Maestro (EOI JM), complain because

individual professional email accounts are created for teachers and the rest of the

workers for use in academic-administrative management. "The mailing address

email will be used as a personal identification credential and access to the pages of the center and in the different procedures that are articulated" (Reg. Reg. Interior 12/20/2019). They were given instructions by the Directorate to use it for internal procedures such as student reclassifications, receiving information about

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classroom rules, instructions on mobility due to COVID restrictions, communication from incidents to the technical or maintenance service of the school, or procedure to communicate students with COVID, to give some examples. Figure as an example, an email from a teacher of 02/06/2020, who asks not to be forced to activate the aforementioned user account created (final annex 5) from your hotmail.com address. to one of @eojesusmaestro.es.

Previously, it was available to all the staff, the "personal and institutions within the platform of the Department of Education, at educamadrid.org.", institutional tool created by the Department that also included messaging snapshot, virtual classrooms, forms and online survey, among others. When the account is created, GS, is configured with automatic forwarding to the usual addresses of the users.

The claimants also consider that the creation of this GS account was not necessary because they had the institutional EducaMadrid.

2) According to the privacy policy of GS, "the administrator can access all the stored emails or determine the person who can access the account data (Annex 16)." "The claimants requested information in this regard that was not answered, although They do not provide a copy of it." The defendant reported in this proceeding that such access would be possible, and might be necessary, to meet the legal requirements of the

administrative or judicial authority, with strictly limited use that is also registered in

the GS administration console.

3) GS for education, which changed its name to GOOGLE WORKSPACE for

education, is a service package of the cloud-based Google suite (saves the

data on GOOGLE servers), which allows the collaborative editing of documents and the

instant communication from any device and place. Among other services

provides those for the web email service Gmail. GS digital services

for education are linked to an email account associated with domains

of educational institutions, normally owned by the Ministry of Education as

responsible for the treatment, which is the one that creates a domain for the management of these

accounts bringing together all educational centers. In the case of the EOI JM, the

domain @eojesusmaestro.es for the management of these accounts, being its administrator the

which requests the creation of professional accounts for each end user, as an example:

nombrefprofesor.apellido@eojesusmaestro.es, which the defendant provided in allegations to the

initiation agreement, annex 3.2

To access the services and log in to any of the applications or services

that are understood in Google SUITE for Education, its home is accessed through the

assigned email account and password provided by GS.

The creation of the account supposes the acceptance of the terms and conditions of the service

contracted online by the EOI on . It will be the administrator of the account (address of the EOI JM),

the one that configures the accounts, the administration console and grants the service to the

persons, modifies or eliminates permissions to users, as contained in the privacy policy

GS privacy. Access to each person's address is produced by entering

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username and password that was sent to each person, and that they could modify. the setting

Effective up and running of the system occurred on 12/1/2019.

In response to the proposal, various documentation related to the

contracting of GS by the EOI Management resulting in the way of contracting the

GS service for education was online on 07/26/2019, creating the account

administrator. On 10/30/2019, GOOGLE sent an email to the EOI to update

Subsequently signing the data processing amendment -DPA in English- that

regulates the rights and obligations of the parties in relation to the treatment.

Among the conditions it is established that "the client acknowledges and accepts that GOOGLE is not responsible for the internal management or administration of the electronic messaging system of the client or messages".

For the transfer of data outside the European Economic Area, the EOI signed a standard contractual clause adopting the position of data exporter, including the references of guarantees and security mentioned in said clauses.

4) In the internal regulations of 12/20/2019 of the EOI JM, it was indicated that the

The center will provide all assigned personnel with an individual email address and non-transferable for your personal use, and that the same address will be used as a credential personal identification and access to the internal pages of the center and to the different procedures that are articulated, being applicable article 14.2 e) of the LPCAP.

5) The address of the EOI of JM, had established a protocol (copy version 12-12-2020)

in case "someone presents compatible symptoms while at school", (Annex 15) to confirmed cases of students with COVID, including the creation of the person in charge "COVID coordinator" that involved the communication of the student to the Coordinator (also reincorporation including the addresses of director and deputy secretary) through

email addresses (the reinstatement will be notified to the COVID coordinator) with a copy to the direction and to the Vice-secretary, which without being assessed, supposes a transmission of data of special character

6) On 02/17/2020, a claimant sent the DPD a "query" for the creation and assignment of the account "teachers demand to use their EducaMadrid email, and yet they cannot do it because the system does not allow it" (Annex 6). Previously, there were already emails about non-compliance with the obligation to activate "an email to my name that has been opened without my consent" (02/06/2020). On 02/19/2020, the DPD responded that "the person responsible for the treatment is the General Directorate of Education Secondary, Vocational Training and Special Regime", (DGESFP and RES) "the director of the center that does not have powers over the decision of the purposes in terms of data protection is assuming a responsibility behind the back of the person in charge", and that with the use "of tools outside the corporate ones, control is lost over the processing of personal data, as well as on compliance with the regulations in the use of the data and the security measures that must be applied".

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Faced with the same type of "consultation" it was produced by another group of teachers as shown in annex 8 of the claim, on 02/27/2020 (annex 8), obtaining as a response that of the DPD, - annex 9- of 02/21/2020, entitled: "USE OF APPLICATIONS FOREIGN THAN THE OF THE COMMUNITY OF MADRID", reiterates that a Director of an educational center is not a governing body with decision-making capacity on the processing of personal data, noting that "About educational applications for learning: "The centers

Prior to their use, they must request the authorization of the person in charge of the treatment.", and the procedure must be established (deducing that as of the date of the facts, Nov 19 did not exist the same). The request will deal with evaluation of the application in its security aspect, and in aspects such as amount and type of data that is incorporate, dissociation of data when they are processed by third parties or involve transfers international, data privacy, all processes to be documented. Authorized its use will be reflected in the General Annual Programming of the Center." In addition, the DPD adds that an educational application is never used for corporate data and administrative with legal effects, having to go to the "computer applications of management".

Educational centers when they use external educational platforms are only justified when they have not been made available to the centers, means or adequate tools and equivalents and will require the authorization of the General Directorate of the Ministry authority, which must establish a procedure for the sake of legal certainty that prevent the use of those that have not been expressly approved".

"It is convenient that the public centers of the Community of Madrid obtain the go-ahead for the use of external educational applications by the data controller, that is, the competent General Directorate (primary, secondary education, etc.), with the advice of the Data Protection Officer."

The request will entail:

to. The evaluation of the application from the point of view of information security -

This requires design and constraints on the amount and type of data to be incorporated into the applications, which will take into account in the first place the privacy of the personal data, and will include assessing the need to dissociate or anonymize the information, especially when there is transfer of data to third parties or international transfers of data. All of this must be documented.

b. The privacy of personal data.

c. Once authorized, the center will be able to approve its "commissioning" and its incorporation into the ANNUAL GENERAL PROGRAM (PGA) with the detail of the use and the personal data that will be affected

It is also indicated that the educational center cannot by itself sign an agreement or service provision contract with the owner of the application, and who will be responsible of the treatment, which must validate the use of third-party platforms or applications by part of the centers, and an agreement or contract must be signed where said General Directorate as data controller and as manager; of this the company provider,

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-Although the employees are not expressly alluded to, it is also alluded to that the platforms must comply with the privacy policy, and information must be incorporated by the center, clearly defined about the treatments carried out, the purposes of the same and their responsible, as well as the location of the data, the retention period, and the guarantees regarding your safety.

The GS tool was discussed in the EOI JM Senate on 12/13/2019, out of order of the day, in requests and questions, several teachers questioning the solution GS that were left unattended.

Union representatives also formulated specific claims on the matter to the Directorate of the Territorial Area of Madrid capital on 03/1/2020 annex 10.

7-On 04/06/2020, the DPD prepares a report "regarding the use of the GS platform for

administrative management, as well as the use of non-corporate emails associated with said platform", which sent (ANNEX 13) to the DGESFP and RES, and this transferred on 05/6/2020 to the EIO Director. It indicates that you stop using third-party services such as GS and its associated email accounts, being a risk to the security of information for not

The data must be hosted on secure servers in the EducaMadrid environment.

8-According to the defendant, the DGESFP and RES, is responsible for the treatment: "Management of students enrolled in educational centers that provide non-university education.

while the GENERAL DIRECTORATE OF BILINGUALISM AND QUALITY OF ENSEÑANZA -DGB and CE- is in charge of designing innovation programs for the improvement of the quality of school teaching and for the development of guidelines for use of the computer platforms, both those of common use or corporate, as well as the external or non-corporate of the educational centers and computer systems linked to the teaching learning and updating", including the development of guidelines and instructions for the use of educational platforms other than corporate ones. On 06/24/2021, the EOI JM submitted to the DGB and CE, " "application for the use of educational tools outside of the CCAA of Madrid" in accordance with the use of third-party applications in the INSTRUCTIONS ON THE PROTECTION OF PERSONAL DATA FOR PUBLIC SCHOOLS OF THE COMMUNITY OF MADRID (Version 2.0), of 11/22/2021

On the other hand, the signing of the treatment order contract would correspond to the DGB and CE, as well as the risk analysis of the applications in terms of data protection, evaluate the clauses that are subscribed and write the instructions for those in charge of treatments. Likewise, it is responsible for drafting the guidelines of use for users to those for which its use is intended.

9.- The data of the corporate email address that was assigned to the professors and employees of the EOI JM for the management of the administrative affairs of its development

through GS are not related to any record of activities

of treatment declared by the defendant, considering that they do not correspond to the

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educational or learning purposes declared in the record of processing activities

of "Management of students enrolled in educational centers that teach non-

universities" (responsible for the treatment of the GENERAL DIRECTORATE OF EDUCATION

SECONDARY, VOCATIONAL TRAINING AND SPECIAL REGIME-DGESFP and RES-), nor

with the legitimizing basis of the treatment of this, which would be that of article 6.1.e) of the RGPD

"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. GDPR 6.1 a)

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

various specific purposes" Purposes of Treatment Management of educational activities,

complementary and extracurricular activities of students enrolled in educational centers that

teach non-university education" In international data transfers "no", if

Well, in the EIPD need analysis, it said yes.

This, without prejudice to the fact that the work activity carried out with the GS tool, for the

education, email may be included in another or other treatment activities

and that the Public Administrations must

10) In a May 2020 report from the DPD, annex 18, on the use of forms

interactive Google forms type for registration procedures for students of the 20-21 academic year,

advises against the use stating that there is no custom treatment contract, no

there is a risk analysis for the privacy and security of the information, and the content

of an administrative nature must always reside on corporate servers.

11) The Deputy Director of the EOI, on 11/16/2020, -Annex 17 of the claim-, sent a statement stating that GS was no longer in effect, it would no longer be available for the teachers of the center and the accounts that still they existed. It alludes in one of the paragraphs to the "instructions and recommendations on Protection of Personal Data for public educational centers of the Community of Madrid of 09/08/2020 that contemplate that in the management of teaching activity through use of educational tools or platforms, centers must refrain from using non-corporate educational applications or platforms or not considered by the Ministry as complementary, which affects GS.

12) The RAÍCES and EducaMadrid platforms are different systems as with scopes and complementary orientations, administrative management, in the case of RAÍCES, and educational goes to EDUCAMADRID. These orientations of each platform are maintained in the three spheres of relationship (teachers-center, teachers-students, student-center). Each platform has its own identification credentials.

In the Official Schools of Languages, the integral system "RAÍCES", used for the management academic and initially used in compulsory education, could not be deployed in the course 20-21 in the EOI, delaying its application. The implementation of RAÍCES in the center Jesús Maestro begins the pilot program in November 2020, generalizing its establishment already at the end of that same course 2020/2021 in the set of EOI.

13) The DPD signs a document on 04/06/2020 (1 in the transfer) that addresses those responsible of the treatment: "complaint about the use of email and the Google platform Suite outside the corporate tools of the Community of Madrid at the school oficial de idiomas Jesús Maestro", which indicates, among other aspects, that it should be avoided as far as

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possible the use of e-mail from non-corporate e-mail accounts, avoiding, for example, those provided by GOOGLE, since when passing through the server, copy remains. When submitting personal information within the organization itself, and if there would be no other choice, he recommends encrypting the information, considering that "the center educational is not entitled to replace corporate email accounts with others external, not even as a complement ""The educational center must not put into use applications or platforms outside the corporate ones without the person in charge having been able to verify the adequacy of the regulations and the previously established privacy policy"

14) The defendant published in the BOCM of 06/24/2021, the Collaboration Agreement of 06/10/2021, between the Community of Madrid and GOOGLE IRELAND LIMITED, to contribute to improving digital competence in the educational field through the use of WORKSPACE FOR EDUCATION, basic version, which highlights:

- It is configured as a complement to the EducaMadrid corporate tools of the Counseling, as tools that integrate information and communication technologies tion in the educational process, through the conditions agreed between the parties in the license and provision of services implemented in the treatment manager contract.
- It indicates that the person responsible for the treatment has carried out a risk assessment with the collaboration of the person in charge of treatment.
- “The services and applications to which users will have access will be used solely for educational purposes, not hosting in them any academic or student progress in the educational system
- Google email services (Gmail) will be disabled for all user accounts, whatever the profile. It will be mandatory to use the EducaMa mail-

drid.

-All the information that can be publicly visible, in any of the Applications of the Platform, may not contain personal data."

-The services are regulated by:

—" The TERMS OF SERVICE, which are included as Annex II to the Agreement, and which are They will also be published in EducaMadrid.

— The DATA PROCESSING ADDENDUM, Annex III, which includes Contractual Clauses Type, and that Google will allow the Ministry or an independent auditor designated by the Ministry to carry out audits by reviewing the Safety Documentation dad.

15) The EOI JM, once the Agreement with Google was signed, presents, in accordance with the pre-seen in the "instructions and recommendations on data protection for data centers public public teachers of the Community of Madrid" in writing of 06/24/2021 to the DGB and CE a report and "Request for the use of educational tools outside the CCAA of Madrid", among them GS indicating in his opinion the deficiencies of EducaMadrid and the advantages of GS.

The defendant adds that the functionalities of the EducaMadrid platform were for that so much inferior to other standard tools in usability and operability. No

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supported online cooperative work on the same document, mailboxes emails were very small and spam filters hardly filtered any threats.

15) The defendant did not provide a risk analysis made in advance of the collection of the

data for the use of the email address in the EOI JM of Madrid, in order to internal academic management and teaching of classes by teachers and for the use of the rest of personnel, ignoring the technical and organizational measures that are implanted tending to guarantee the security and guarantee of the interested parties.

16) In the DECALOGUE OF GOOD PRACTICES IN THE USE OF EDUCATIONAL APPLICATIONS, TIVAS, approved on 06/04/2019 by the DGB and CE and the DPD, disseminated to educational centers it was indicated:

"Personal data can only be stored on platforms of the competent Ministry.

to)

try on education. When it is necessary to use other technologies, it is guaranteed

The anonymization of the data stored on the students and that generated by them will be ren"

"Each center will agree in the PGA (Annual General Programming) the applications

to)

that will be used during the school year, in the specific ICT section, once

analyzed the privacy policies of said applications, guaranteeing compliance

of the regulations on Protection of educational application", surely it means "in pro-

data protection". "The institutional website of the educational center must be hosted on the platform

EducaMadrid and email communications will be made through the

EducaMadrid accounts, as established in the BOCM of May 3, 2004, "from

the start-up of the EducaMadrid Portal, the institutional web pages of the centers

public educational centers and services dependent on the Department of Education of the Co-

Community of Madrid will be hosted at the URL that said Department provides for this purpose.

to."

FUNDAMENTALS OF LAW

Yo

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 and 48.1 of the Law

Organic 3/2018, of 5712, Protection of Personal Data and guarantee of the

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "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."

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II

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GOOGLE SUITE for Education, GS (renamed GOOGLE WORKSPACE for

education, GW), is a specific technological solution of the suite, which contains a

suite of communication, productivity, collaboration and security tools

linked to learning in education. Google provides these software services

as a cloud service. Users can access the different tools at

through a browser or through applications installed on mobile phones and

devices. GS is a suite of cloud-based services from the Google suite,

(allows access from different devices that have internet access) that

enable collaborative document editing and instant communication from

any device and place and that gained prominence as a result of the start of the pandemic as communication tools in educational centers due to the absence or insufficiency of the means available to those responsible for the treatment.

The free, or basic version of GOOGLE SUITE is called "Fundamentals", while that the paid versions called "Standard" or "Plus" allow the administrator, among other options, select the data storage of certain services principals in a specified region (data region policy), so that the data in rest, including backups may not be transferred outside the Union European.

The services available are, among others, Gmail, a web email service that was were used by the claimants as an administrative management tool, not an educational one, being the corporate address of said emails, that of the name of each employee followed surname@eoijesusmaestro.es

With the creation of the account by the EOI JM in GS, using its own domain, it was assigned to each employee, teacher or not, a username and password that allows each one to enter in the GS solution, email being one of the tools whose use derives from the same. Its use can be made from different devices as it works in the cloud, it is Internet access required.

Normally, the Ministry of Education as the person responsible for the treatment and client is the that creates a domain for the management of these accounts for educational centers. The GS digital services for education are linked to email accounts associated with domains of educational institutions. For example, in the case of CCAA of Andalucía, which signed an agreement with GOOGLE for this application, created the domain g.educaand.es

for the Andalusian educational centers of
for the management of those accounts

public ownership, preventing the proliferation of each center, institute or college or school that had a domain type @nombredelcentro.org or school managed by separate your account. Also in the CCAA of Madrid there was a rule in force in which no the creation of its own domain by the center was allowed, which in this case is used to the creation of the GOOGLE account.

Once the Department's domain has been created, email accounts linked to that domain will be created. domain for teachers and students (users). It was also the case of the domain of the account of the Regional Ministry of Education of Madrid when it signed the agreements with MICROSOFT AND GOOGLE, placing the application on the page of EDUCAMADRID, as a complement to those that make up the corporate platform EducaMadrid. Therefore, the request of the EOI JM of 06/24/2021 in "request for use of

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educational tools outside the CCAA of Madrid" in which it is indicated that the center “makes a GS account available to all students and teachers, the use of which requires the express acceptance by the users, included in the domain

@eoijesusmaestro.es" and the measure of "migration to the environment" is considered to be under the requirements that make up the Agreement that does not provide for it in the domain @eoijesusmaestro.es.

Each user has an email address associated with digital services.

them. To access services and sign in to any of the Google applications,

accessed through the assigned email account and password to the entire con-

had of services offered by GS.

The services and configurations are made from the "administration console", "tools" tool and online console that Google makes available to the client to manage the services cios."

This would include security options in the configuration of accounts, mailboxes and the messages.

The application has several editions, the basic one being "FOR EDUCATION FUNDAMENTAL. TALS", free to eligible institutions.

The client's account is hosted by GOOGLE.

II

Regarding the examples given by the defendant of the "report on the use by part of teachers and students of applications that store data in the cloud with systems outside the educational platforms" of the AEPD, pointing out that the information that appears on the AEPD website, which goes back to a press release of 03/06/2018 that reports its content, of which the following stands out:

- The study has its origin in the strong increase in the use of apps in the school environment by part teachers and students, as well as the large volume of data that is handled.
- the report is based on a study carried out among educational centers in collaboration with the industry applications to collect data from these centers on how they use this type of applications and tools, and information is collected on the use that students or teachers make cloud storage tools, social networks and email electronically, outside the educational platforms of the centers and at the initiative of the teachers. Only a few centers have stated that they have established internal standards for authorize its use.

The conclusions of the study include:

- In most centers they use these applications and in many cases through them

store personal data.

The great variety of applications that are used by the teachers.

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-The study infers the majority use of systems that store data in the cloud with the purpose of sharing documents between teachers and students and storing information such as attendance list ratings photos and videos.

-Regarding the use of emails, it is verified that the email provided by the educational platform is not the only one used.

The report also provided guidance in the form of a decalogue of recommendations

As a summary of the case at hand:

-Educational centers must ensure that the incorporation of technologies in the classrooms is carried out respecting the right to Data Protection of those whose information staff is treated.

-Teachers must request authorization of the applications for their use from the center which must make an evaluation of the application in terms of information security.

- In addition to raising awareness of the use of data for students, it is indicated that it falls on the center the duty to inform parents or students of the use in classrooms of these apps that process student data, centers must use those that offer information about who treats the data, for what and for what purpose, as well as where they are stored, the time they are kept and security measures.

Although the report, dated prior to the entry into force of the GDPR, refers to the use

of the teachers, not to the use that the centers make, both one and the other have to take into account account the identification, assessment and treatment or mitigation of risks for rights and freedoms of people in the processing of personal data, through technical and organizational measures, referring to the nature, scope, context and purposes of the treatment. Measures to be updated when necessary and reviewed. This Risk management also requires that it be documented.

IV.

The GDPR indicates:

article 1:

"1. This Regulation establishes the rules relating to the protection of persons regarding the processing of personal data and the rules relating to the free movement of such data.

2. This Regulation protects the fundamental rights and freedoms of natural persons and, in particular, their right to the protection of personal data.

article 3:

"1. This Regulation applies to the fully or partially automated processing of personal data, as well as the non-automated processing of personal data contained or intended to be included in a file."

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article 4:

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

1) "personal data" means any information about an identified natural person or

identifiable ("the data subject"); An identifiable natural person shall be considered any person whose identity can be determined, directly or indirectly, in particular by means of a identifier, such as a name, an identification number, data of location, an online identifier or one or several elements of physical identity, 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;

7) "responsible for the treatment" or "responsible": the natural or legal person, authority public authority, service or other body that, alone or jointly with others, determines the ends and means of the treatment; if the law of the Union or of the Member States determines the purposes and means of treatment, the person in charge of the treatment or the specific criteria for its The appointment may be established by the Law of the Union or of the Member States;"

8) "in charge of the treatment" or "in charge": the natural or legal person, authority public, service or other body that processes personal data on behalf of the data controller treatment;

As a starting point, it should be noted that the analyzed use of the data processed in the claimants for the EOI JM are not related to what could be a platform of learning or the educational function but rather with the internal academic sphere from day to day. day in the management that supposes the organization and direction of the work in the classes of languages. In no way have they mentioned the use of other GS tools that may serve such a learning, or educational function, which may also have been used. The truth is that this suite arises from or is related in general to the creation of

a series of tools suitable for any type of management, business or business.

The claim deals with the opening and use of the email account for the claimants and other employees, it would also affect the rest of the application that may have been used for said educational purposes even though it is not the direct object of the procedure. The basic issue is that both GOOGLE SUITE and GOOGLE SUITE for education, which is an adaptation of the first, have common tools that can be used for ordinary management of both companies and public schools. The differences are the purpose of use and the data processed for it.

The twenty-third additional provision of Organic Law 2/2006, of 3/05, on Education, establishes in a general way, one of the basic principles in relation to the treatment and communication of personal data within its scope of application, by providing:

"3. In the processing of student data, technical standards and organizations that guarantee their security and confidentiality. The teachers and the rest of the personnel who, in the exercise of their functions, access personal and family data or who affect the honor and privacy of minors or their families will be subject to the duty of secrecy."

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The email address is the set of words or signs that identify the issuer. or the recipient of an email message. It is made from a set of words or signs freely chosen, normally by its holder or by the organization to which which it belongs to, with the only limitation that this address does not match that of another person. It consists of a user ID, followed by the @ sign, and then the domain (identification provided by the mail service provider, with a period, and

acronyms that can identify the activity of the organization (eg “.org”) or acronyms

of the country (eg “.es” or “.cató”).

In this case, the addresses are created directly containing information about the surrogates.

names, name and surname, or the position or person in charge, it is to be assumed that for the co-

it is known between whom the messages are exchanged.

The creation of the account for each employee is done for the purpose of communications

of teachers with the EOI, and among them, referred to as parties to a contract or re-

negotiating, labor or administrative relationship, and they are made because at the time it was considered necessary

necessary for the maintenance and/or fulfillment of said relationship, depending on the tasks that

the teachers who are the claimants in this case must legally perform. So, ha-

It would be necessary to differentiate what is called an account for corporate use compared to what would be

account or personal address as one used for private purposes by a person.

With this, we want to emphasize that consent is not the legal basis that protects in its

case the creation of an account for corporate use in an entity, be it a company, be it admi-

public administration, due to the purpose of the creation to which it responds -work purposes- to accommodate

place the development of the functions that it develops against the very dynamics that make up

the elements of consent: "consent of the interested party": any manifestation

of free, specific, informed and unequivocal will for which the interested party accepts, either

by means of a declaration or a clear affirmative action, the processing of personal data

that concerns you”, art 4.11 GDPR. If the consent thesis were applied, it could be that

there were no such accounts and uses, obeying their establishment to the power of direction and organization.

organization of the employer, logically with the safeguards that in data protection

may affect the rights of those who are the owners of the data.

Since any treatment, in whatever way it is and without distinguishing its legal basis, supposes

an interference and limitation of the right of its owner to his privacy and his right to pro-

data protection, the first thing that should be indicated is that it should only be implemented when it passes the judg-

necessity and proportionality in relation to the legitimate objectives pursued, which should be credited.

Therefore, it is agreed that the establishment of accounts for corporate use does not require the employee consent. There are different types of email accounts electronic, according to its purpose, the corporate account for work use, is property of the company or institution in which the services are provided, who determines both the user and the provider and the domain, and also the purposes and conditions of use to which it is subjected. The company can only access email accounts corporate email provided to its workers when access is justified and not there is no other mechanism that makes it possible to achieve the objective pursued without the need for access them.

The claimants or their union representatives state that they had before the im-plantation of this GS account, of personal addresses or "linked to the personal account" personnel that was included in the file of each teacher or worker". It is appreciated that some

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employees on the date after the implementation of the use of GS handle addresses of dominio hotmail from MICROSOFT, yahoo.es, or Gmail.com, in work-related communications internal. Regarding this aspect, however, it should be noted that it is not appropriate for the Internal affairs of the organization that involve teachers are managed through personal, private accounts of the employee due to their work nature and content outside the organization organization in which it develops, referring to the power of management of the employer.

This may give rise to confidentiality commitments of the information or loss of data.

cough, to cite just two examples.

Regarding the opposition to the processing of data, this right (article 21 of the GDPR) is not applies when processing is based on consent, although the right to withdraw consent consent at any time can have a similar result.

Recitals 74 and 78 of the GDPR state:

"(74) The responsibility of the data controller must be established for any any processing of personal data carried out by himself or on his behalf. In particular, The person responsible must be obliged to apply timely and effective measures and must be able to demonstrate the compliance of processing activities with this Regulation, including including the effectiveness of the measures. Such measures should take into account the nature, scope, context and purposes of processing as well as the risk to the rights and freedoms from physical persons."

"(78) The protection of the rights and freedoms of natural persons with respect to the tra- The processing of personal data requires the adoption of appropriate technical and organizational measures. ordered in order to guarantee compliance with the requirements of this Regulation. TO In order to be able to demonstrate compliance with this Regulation, the controller must adopt internal policies and apply measures that comply in particular with the principles principles of data protection by design and by default. Such measures could consist aim, among others, to minimize the processing of personal data, pseudonymize the above personal data as possible, provide transparency to the functions and data processing personal data, allowing the interested parties to supervise the data processing and the person in charge ble of the treatment to create and improve security elements. When developing, designing, selecting create and use applications, services and products that are based on data processing personal data or who process personal data in order to fulfill their role, data processors should be encouraged to producers of products, services and applications to take into account the right to data protection when they develop and design these products, services and applications,

and that they ensure, with due attention to the state of the art, that those responsible and those in charge of the treatment are in a position to fulfill their obligations in matters data protection law. The principles of data protection by design and by default should also be taken into account in the context of public contracts.”

V

The defendant is considered to have infringed the GDPR in article 32 of the GDPR, which indicates

AC:

"1. Taking into account the state of the art, the application costs, and the nature, the scope, context and purposes of processing, as well as probability and severity risks variables for the rights and freedoms of natural persons, the person in charge and the person in charge of the treatment will apply appropriate technical and organizational measures to

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guarantee a level of security appropriate to the risk, which, where appropriate, includes, among others:

- a) the pseudonymization and encryption of personal data;
- b) the ability to ensure confidentiality, integrity, availability and resilience permanent treatment systems and services;
- c) the ability to restore the availability and access to personal data in a manner fast in case of physical or technical incident;
- d) a process of regular verification, evaluation and assessment of the effectiveness of the technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the level of security, particular account shall be taken of the risks presented by the data processing, in particular as a consequence of the

destruction, loss or accidental or unlawful alteration of personal data transmitted, stored or otherwise processed, or unauthorized communication or access to such data.

3. Adherence to an approved code of conduct pursuant to article 40 or to a certification mechanism approved under article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of this article.

4. The controller and the processor shall take measures to ensure that any person acting under the authority of the person in charge or the person in charge and has access to personal data can only process such data following instructions from the responsible, unless it is obliged to do so by Union law or the Member states.". (The underlining is from the AEPD).

The aforementioned article is complemented with what is indicated in recital 83, "framework of the risk assessment in relation to data security", and taking into account that the analyzes or evaluations of risks regulated in the RGPD, do not replace derivatives of information systems security risk management.

The creation of the accounts begins on November 19, with operation from the following month. following, before the declaration of the state of alarm for the pandemic. It is the object of re-claim, use and creation of an email account for internal purposes of academic management, and the type of use that is given, of internal management in requests and co-ammunition.

The registration in the service was given by the management of the EOI, not by the person responsible for the treatment: General Directorate of Secondary Education, Vocational Training and Special Regime, with defined competencies in the matter, also adding reasons such as the standardization of the conditions of use and implementation of platforms outside the that advises the making of the last decision by the person in charge of the

treatment. With this, it would be a question, among other circumstances, of not letting a tool only for its interaction or integration advantages, and this despite the autonomy of academic management that the aforementioned EOI can count on, thus estimating in the first place that It is based on this lack of legitimacy, which could be framed in article 29 of the GDPR:

"The person in charge of the treatment and any person acting under the authority of the person in charge

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or the person in charge and has access to personal data may only process said data following instructions of the person in charge, unless they are obliged to do so by virtue of the Law of the Union or of the Member States.

The fact that training courses on the tools had been promoted, that they were very versatile or that solved various issues does not justify the implementation of the itself, and should have been driven in an oriented manner. If such an element was deficient in its regulation, the EOI JM should have requested authorization or consultation exposing the project to those responsible for the aforementioned treatment, that there is no record that they were aware that was going to be implanted, more than when it began to be known after the reactions initiated in February 2020 by the employees who complain, already in the middle of the development of the course and with the declaration of the pandemic by COVID-19.

It could be considered that despite this lack of internal competence as the person responsible for the processing, at least functionally, the transmission of data, in this case by of the address of the EOI JM to GOOGLE for the creation of the account constitutes a request of treatment, when deciding the purpose of the treatment with the data of the employees, the purposes for which they are going to be used, and extensive technical means that the person in charge makes available

your disposal.

In the same sense, the export of data that is carried out based on the cloud system offered by GOOGLE.

The DGESFP and RE, take a first measure on 05/06/2020 notifying the Directorate of the EOI the DPD report of 04/06/2020, when the DPD position was clear since February 2020.

The management of the EOI JM, as the highest academic and professional manager of the same, acting in fact as data controller has not provided analysis any of the risks, probabilities and seriousness linked to the use of an account created for the use of the platform such as GOOGLE SUITE, more specifically related to the use of its email.

To this was added that despite the fact that the GDPR entered into force in May 2018, it already existed before a decalogue of good practices in the use of educational applications, and other instruments that reported on the issue, but the EOI JM went ahead, implementing the application for a use other than educational, which is the one claimed, an internal management use academic, considering there was no specific application for administrative management that the issuance of common instructions for the use of applications, and that take force on the occasion of the declaration of the pandemic, in which

They begin to take over the educational scene. The defendant stated that when the pandemic, some centers resorted to these non-corporate applications to teach distance classes, having to request reports of which were these centers and What tools did they use?

Specifies that the aforementioned EOI JM:

-It began its use when considering that the existing tool, EducaMadrid of content educational, not academic management, with little implementation of e-mail EducaMadrid, some claimants using their personal email address, considering

In addition, it suffered from a lack of integration of the videoconference tool with the rest, the user experience and the online training platform through the classes is hardly usable, lacks collaborative online office applications, lack of integration with online office systems of the virtual classroom in the "MOODLE" application, as well as another section of the benefits of GS applications for education.

-The RAÍCES academic management application (used in compulsory education) is not available.

I was prepared for the 20/21 academic year, nor did I have an alternative.

-With the request on 05/6/2020 of the person in charge to the DGBCE "to provide the guidelines for the use of computer platforms other than corporate ones that are using certain centers as long as the program is not launched

RAÍCES software that allow compliance with data protection regulations" is shows the lack of foresight and unified standards for the sector that made each one seek a management possibility, as well as the statement that "the data from all the centers that were using RAÍCES". As well as the request of recommendations for the development of guidelines and instructions for the use of educational platforms outside the corporate ones, which should also be incorporated for the course 20-21 (24 pages) containing a table of contents including the section on "use of educational applications and platforms".

It is appreciated that with the implementation in the EOI JM of GOOGLE SUITE for education, no No aspect has been presented regarding the identification, assessment and mitigation of the risks to the rights and freedoms of individuals in data processing

personal, through technical and organizational measures, referring to the nature, scope, context and purposes of the treatment that must be documented by the claimed party before starting treatment, measures that must also be updated when necessary. necessary and reviewed.

Thus, the security configuration measures of the mail are unknown, including the ad-together, in what cases and how the encryption of shipments is proceeded, the security measures provided to employees against the various risks that may arise, from identity theft, spam or the use of malware to name the most common.

It is unknown if employees were made aware of their terms of use, not a mere referral to the GOOGLE website, detailing the level of confidentiality of its use, the rules on the possibility and cases in which the content can be monitored, considering that the information could be incorporated as annexes to the contracts, since they may contain disciplinary effects in the face of breaches of confidentiality in the treatment of information or data. In this case, it can be seen that the instructions on this are few and far between. and who receive information without systematizing and deficient in the implementation of the design of the application.

Measures against risks of management treatment effects are unknown of an EOI that were stored in the cloud, as well as the location of the site in which the data was stored, if there were sub-managers, and they must have adopted actively carried out an analysis of said risks and some measures that are not proven to exist. so. Being unaware of the risks that are assumed in the use of the mail that is the object of the re-clamation, the analysis of its severity and/or consequences is unknown.

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All of these reasons prove the infringement of the aforementioned article 32 of the GDPR.

SAW

The infringement is included in article 83.4.a) of the GDPR, which indicates:

"4. Violations of the following provisions will be penalized, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company, in an amount equal to a maximum of 2% of the total turnover annual global of the previous financial year, opting for the one with the highest amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8, 11, 25 to 39, 42 and 43;"

Article 58.2 of the GDPR indicates: "Each control authority will have all the following corrective powers indicated below:

"d) order the controller or processor that the processing operations comply with the provisions of this Regulation, where applicable, of a certain way and within a specified period of time.

Article 83.7 of the GDPR adds:

"Without prejudice to the corrective powers of the control authorities under article 58(2), each Member State may lay down rules on whether and to what extent measure, impose administrative fines on authorities and public bodies established in that Member State.

The Spanish legal system has chosen not to penalize entities public, as indicated in article 77.1. c) and 2. 4. 5. and 6. of the LOPDDGG: "1. He regime established in this article will be applicable to the treatments that are responsible or in charge:

"c) The General Administration of the State, the Administrations of the communities autonomous entities and the entities that make up the Local Administration."

"2. When the managers or managers listed in section 1 commit

any of the offenses referred to in articles 72 to 74 of this organic law, the

competent data protection authority will issue a resolution sanctioning

the same with warning. The resolution will also establish the measures that

appropriate to adopt so that the conduct ceases or the effects of the infraction are corrected.

would have committed

The resolution will be notified to the person in charge or in charge of the treatment, to the body of which

depends hierarchically, where appropriate, and to those affected who had the status of

interested, if any.

3. Without prejudice to what is established in the previous section, the data protection authority

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data will also propose the initiation of disciplinary actions when there are indications

enough for it. In this case, the procedure and the sanctions to be applied will be the

established in the legislation on the disciplinary or sanctioning regime that results from

application.

Likewise, when the infractions are attributable to authorities and executives, and

certify the existence of technical reports or recommendations for treatment that do not

had been duly attended to, in the resolution in which the sanction is imposed,

It will include a reprimand with the name of the responsible position and the

publication in the corresponding Official State or regional Gazette.

4. The data protection authority must be informed of the resolutions that

fall in relation to the measures and actions referred to in the sections

previous.

5. They will be communicated to the Ombudsman or, where appropriate, to similar institutions of the autonomous communities the actions carried out and the resolutions issued to the under this article.

6. When the competent authority is the Spanish Data Protection Agency, this will publish on its website with due separation the resolutions referring to the entities of section 1 of this article, with express indication of the identity of the responsible or in charge of the treatment that had committed the infringement.”

Article 73 of the LOPDGDD, indicates, for the purposes of prescription of the offense: "

Offenses considered serious”:

"Based on what is established in article 83.4 of Regulation (EU) 2016/679, are considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

f) The lack of adoption of those technical and organizational measures that result appropriate to guarantee a level of security appropriate to the risk of the treatment, in the terms required by article 32.1 of Regulation (EU) 2016/679.”

Therefore, in accordance with the applicable legislation and assessed graduation criteria of the sanctions whose existence has been accredited, the Director of the Spanish Data Protection Agency

RESOLVES:

FIRST: IMPOSE the MINISTRY OF EDUCATION, UNIVERSITIES, SCIENCE AND SPOKESMAN of the AUTONOMOUS COMMUNITY OF MADRID, with NIF S7800001E, for an infringement of article 32 of the GDPR, typified in article 83.4 a) of the GDPR, and to prescription effects in article 73.f) of the LOPDGDD, a sanction of warning.

SECOND: NOTIFY this resolution to the MINISTRY OF EDUCATION, UNIVERSITIES, SCIENCE AND SPOKESMAN of the AUTONOMOUS COMMUNITY OF

MADRID.

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THIRD: COMMUNICATE this resolution to the OMBUDSMAN, in

in accordance with the provisions of article 77.5 of the LOPDGDD.

FOURTH: 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 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 replacement 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 contentious appeal

before the Contentious-Administrative Chamber of the National Court, with

in accordance with the provisions of article 25 and section 5 of the fourth additional provision

of Law 29/1998, of 13/07, regulating the Contentious-administrative Jurisdiction, in the

period of two months from the day following the notification of this act, according to what

provided for in article 46.1 of the aforementioned Law.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of the LPACAP, it may be

provisionally suspend the final resolution in administrative proceedings if the interested party expresses

their intention to file a contentious-administrative appeal. If this is the case, the

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

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

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

remaining records provided for in art. 16.4 of the LPACAP. 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 proceedings within a period of two months from the day following the notification of this resolution, would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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