

□ File No.: PS/00117/2022

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated March 11, 2021

filed a claim with the Spanish Data Protection Agency. The
claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the part
claimed).

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

Both the complaining party and the claimed party are members of the same
staff meeting, and the claimant states that the claimant has forwarded emails
emails to other members and non-members of this staff board and to
corporate emails from unions and groups without legitimacy to do so.

The emails that do not belong to the staff meeting are the following: ***EMAIL.1,
***EMAIL.2, ***EMAIL.3, ***EMAIL.4, ***EMAIL.5, ***EMAIL.6 and ***EMAIL.7; (in
forward, reported email addresses),

In this email, the claimant's data such as his name and address also appear
work email.

The claimant sent an email on January 22, 2021 to members of the
staff meeting in which he requested that they stop forwarding his email address
email to third parties; but the defendant re-sent the claimant's emails to
people from outside the staff meeting on February 16 and 17, 2021 and 16
March 2021.

Relevant documentation provided by the claimant:

- Printout of email dated January 20, 2021 sent by

***EMAIL.8 towards various emails including email

of the claimant and the email addresses reported that he indicates in his claim among others. In this email, it is requested that they be included among the recipients of staff board mailings to a new board member and to the delegate of the trade union section of STAS-CLM.

- Printout of email dated January 22, 2021 in which the claimant responds to the recipients of the previous email, except to the addresses reported mail. In this email you request that your email not be sent

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nor other data of the personnel board to the email addresses denounced due to because they don't belong to the personnel board.

- Printout of email dated January 28, 2021 in which the

The claimant reiterates that he does not want his name or email to be sent to other non-board member email addresses of personal.

- Printing of email dated February 16, 2021 sent by the

claimed to multiple email addresses that include the email address

work email of the claimant and the following addresses that the claimant

indicates that they do not belong to the staff board: ***EMAIL.4, ***EMAIL.5,

***EMAIL.9, ***EMAIL.2, ***EMAIL.10 and ***EMAIL.11. The content of this email is

an attachment with the subject "exit record and writings".

- Printing of email dated February 17, 2021 sent by the

claimed to multiple email addresses that include the email address

work email of the claimant and the following addresses that the claimant

indicates that they do not belong to the staff board: ***EMAIL.4, ***EMAIL.5,

***EMAIL.9, ***EMAIL.2, ***EMAIL.10 and ***EMAIL.11. The content of this email

there are three attachments and the content indicates that it contains FeSP-UGT proposals

for a staff meeting.

- Printout of email dated February 18, 2021 in which the

The claimant responds to the previous email of February 17, 2021, reiterates that it does not

you want those emails to be sent to other email addresses that you do not

correspond to members of the staff board, and indicate which mailing addresses

e-mail are those that should not have been in the "To" of the mail of 17

February 2021.

This claim was supplemented by a document presented by the

claimant before the Spanish Data Protection Agency (hereinafter, AEPD) and

date of entry on March 26, 2021, in which the following is provided, among other things:

documentation:

- Printing of email dated March 16, 2021 sent by the

claimed to multiple email addresses that include the email address

email address of the claimant and, among other addresses, the following:

***EMAIL.12, ***EMAIL.2, ***EMAIL.13 and ***EMAIL.9. This email

contains an attachment and its content is "attached registered writings".

- Indication that the emails ***EMAIL.12, ***EMAIL.2, ***EMAIL.13 and

***EMAIL.9 correspond to members of CCOO not belonging to the board of

staff.

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SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (in forward LOPDGDD), said claim was transferred to the claimed party, for to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements established in the regulations of Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected on April 19, 2021 as

It appears in the acknowledgment of receipt that is in the file.

The antecedents that appear in the information systems are the following:

On May 11, 2021, within procedure E/04149/2021, it has entry in the AEPD, a document presented on behalf of FSP-UGT, in which provides, among other things, the following information:

- Allegation that the email address has been used improperly legitimate because it has been used by the union and the claimant is a delegate of staff and member of the staff board.

- Allegation that the defendant understood that, from his actions, there was no any infringement in terms of protection of personal data due to the following reasons:

- “- The corporate nature of that email account (**EMAIL.14),
- Its use strictly related to the professional scope of the board of

work center staff

- Allegation that the emails denounced by the claimant have been sent from an email account (***EMAIL.15) that is not owned by of FeSP-UGT, and it is indicated that this aspect had already been warned to the UGT workers. And printing of a "Reminder to workers" is provided dated January 15, 2020 stating, among other things, the following:

"Therefore, any email that is sent by any of the workers of this Federation from an unauthorized or unofficial address not will be considered the responsibility of this body, and may adopt the particular measures that correspond against the issuers."

THIRD: On August 12, 2021, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the functions assigned to the control authorities in the article 57.1 and the powers granted in article 58.1 of the Regulation (EU)

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2016/679 (General Data Protection Regulation, hereinafter GDPR), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following extremes:

The list of members of the personnel board and the motivation for sending the emails to email addresses that did not belong to members of that board of directors.

personnel could not be verified after having sent a request for

information to the claimant at the address ***ADDRESS.1.

It is on record that this information requirement was notified on February 2, 2022, when it was picked up by C.C.C. with NIF ***NIF.2 in ***ADDRESS.1, without has received a response to this request for information from the AEPD.

FIFTH: On June 9, 2022, the Director of the Spanish Agency for Data Protection agreed to start a sanctioning procedure against the defendant, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of article 6 of the GDPR, typified in article 83.5 of the GDPR.

SIXTH: On June 30, 2022, the claimed party submitted a written allegations in which, in summary, he stated that the address to which he was sent the initial agreement is not your address, but that of the UGT union in your locality, the which is not authorized to collect notifications on your behalf, which is why you do not was unable to respond to the request made on February 2, 2022, causing an absolute defenselessness, for which reason he requests that the proceedings be retracted to said date.

In relation to your address, you state that your address for notification purposes is ***ADDRESS.2.

The defendant considers that the email addresses sent are from representatives of workers or trade union organizations with representation on the Personnel Board.

The defendant alleges the non-existence of the infringement under article 9 of the GDPR, by the claimant belongs to a trade union organization, and such emails should be treated workplace electronics.

It is alleged that all workers of the Board have access to the employee portal with a directory where you can access the name, job position, destination, email and phone.

SEVENTH: On July 7, 2022, the procedure instructor agreed to consider reproduced for evidentiary purposes the claim filed by A.A.A. and his documentation, the documents obtained and generated during the admission phase to processing of the claim, and the report of previous investigation actions that They are part of procedure E/08764/2021.

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Likewise, it is considered reproduced for evidentiary purposes, the allegations to the initiation of the referenced sanctioning procedure, presented by B.B.B., and the accompanying documentation.

EIGHTH: On July 19, 2022, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency sanction B.B.B., with NIF ***NIF.1, for a violation of article 6 of the GDPR, typified in article 83.5 of the GDPR, with a fine of €2,000 (two thousand euros)

NINTH: On August 19, 2022, allegations were presented to the proposal resolution, reiterating those already indicated on June 30, 2022

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

PROVEN FACTS

FIRST: Dissemination of the email addresses of each member of the

staff meeting of the claimant's workplace, by sending emails with the certificate of meetings of the board to corporate emails of unions and collectives without legitimation for its reception, as well as to third parties that do not belong to the board of staff.

SECOND: The defendant alleges the non-existence of the infraction as it belongs to the claimant to a trade union organization, and treat such emails as labor sphere.

FUNDAMENTALS OF LAW

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Article 4.11 of the GDPR defines the consent of the interested party as "all manifestation of free, specific, informed and unequivocal will by which the The interested party accepts, either through a declaration or a clear affirmative action, the processing of personal data concerning you".

In this sense, article 6.1 of the LOPDGDD establishes that "in accordance with the provided in article 4.11 of Regulation (EU) 2016/679, consent is understood to of the affected party, any manifestation of free, specific, informed and incompetent will. unequivocal by which he accepts, either by means of a declaration or a clear action affirmatively, the processing of personal data concerning him".

For its part, article 6 of the GDPR establishes the following:

"1. Processing will only be lawful if at least one of the following conditions is met:

nes:

a) the interested party gave his consent for the processing of his personal data

for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is part of or for the application at the request of the latter of pre-contractual measures;

c) the processing is necessary for compliance with a legal obligation applicable to the responsible for the treatment;

d) the processing is necessary to protect vital interests of the data subject or of another Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest public or in the exercise of public powers conferred on the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person in charge of the treatment or by a third party, provided that on said interests the interests or the fundamental rights and freedoms of the interested party do not prevail. that require the protection of personal data, particularly when the interest sado be a child

The provisions of letter f) of the first paragraph shall not apply to the treatment carried out by public authorities in the exercise of their functions.”

II

In the present case, the complaining party denounces the defendant party because of emails have been repeatedly forwarded to other members and non-members of the staff board of which he is a member and to corporate emails of unions and collectives without legitimacy or consent on the part of the claimant.

It has entry in the AEPD, a document presented on behalf of FSP-UGT, where two aspects are revealed, on the one hand the corporate nature of the email account object of this assumption (**EMAIL.14), which means that its use is is strictly related to the professional scope of the personnel board

from the workplace”.

Second, it is alleged that the emails denounced by the claimant have been sent from an email account (**EMAIL.15) that is not property of FeSP-UGT, and it is indicated that this aspect had already been warned to the UGT workers.

Printing of a "Reminder to workers" dated January 15, 2020 which indicates, among other things, the following:

"Therefore, any email that is sent by any of the workers of this Federation from an unauthorized or unofficial address not will be considered the responsibility of this body, and measures may be adopted individuals that correspond against the issuers.”

This being the case, it seems that the FSP-UGT is exempted from all responsibility, but it is not the one claimed, since the issuance of emails on the 16th and 17th of February 2021 and March 16, 2021, despite the claimant's request that stop forwarding your email address to third parties.

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The defendant in the brief of allegations of June 30, 2022, requests retroaction of the actions for not having received the information request dated 2 February 2022.

In this sense, we must indicate that the actions carried out in the month of February These are preliminary actions that are carried out in accordance with article 65.4 of the LOPDGDD, carried out prior to the start of the disciplinary procedure.

For this reason, defenselessness can only be considered in the event that once the initiation agreement, and not before, the defendant would not have been able to exercise the rights that Law 39/2015 of common administrative procedure confers on it in all disciplinary procedure, such as the right to know the facts that are charged and to be able to present arguments and evidence, or exercise their right to audience.

As we are not in any of these cases, retroaction does not proceed of the performances.

Secondly, the defendant resorts to article 9 of the GDPR, justifying that the Data processed is union affiliation and was disseminated in a workplace.

However, it is considered that the processing of the personal data of the claimant has been excessive because the emails that are the subject of this claim were they also referred people outside the personnel board, and more when possible its omission with the use of tools such as blind copy, when it has been required by the owner of that personal data that it is not used when expressing expressly that you do not consent to the processing of your email, in the exercise of your right to object.

Therefore, it is considered that we are dealing with an illegal processing of personal data, by sending emails to other members and non-members of the board of personnel of which the claimant is a member, and to corporate emails from unions and collective, incurring in a violation of article 6 of the GDPR, indicated in the basis of law II, since the personal data have been processed without counting with no legitimacy.

IV.

In accordance with the precepts transcribed, for the purpose of setting the amount of the sanction of fine to impose we must take into account article 83.5.a) of the GDPR, where

indicates that "violations of the following provisions will be penalized, according to according to paragraph 2, with administrative fines of EUR 20,000,000 as maximum or, in the case of a company, of an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount:

a) the basic principles for the treatment, including the conditions for the consent in accordance with articles 5, 6, 7 and 9;"

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Article 72.1 b) of the LOPDGDD states that "according to what is established in the Article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years, the infractions that suppose a substantial violation of the articles mentioned therein and in particular, the following:

b) The processing of personal data without the fulfillment of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679."

V

In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the GDPR, precepts that state:

"Each control authority will guarantee that the imposition of administrative fines under this Article for infringements of this Regulation indicated in sections 4, 5 and 6 are effective in each individual case, proportionate and dissuasive."

"Administrative fines will be imposed, depending on the circumstances of each

individual case, in addition to or in lieu of the measures contemplated in

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question

such as the number of interested parties affected and the level of damages that

have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to

alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor,

taking into account the technical or organizational measures that they have applied under

of articles 25 and 32;

e) any previous infringement committed by the controller or processor;

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

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what

extent;

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

previously against the person in charge or the person in charge in relation to the

same matter, compliance with said measures;

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j) adherence to codes of conduct under article 40 or to mechanisms of

certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or

indirectly, through the infringement.”

Regarding section k) of article 83.2 of the GDPR, the LOPDGDD, article 76,

"Sanctions and corrective measures", provides:

"2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of data processing.

personal information.

c) The benefits obtained as a consequence of the commission of the infraction.

d) The possibility that the conduct of the affected party could have led to the commission

of the offence.

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

violation, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate.

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

alternative conflict resolution mechanisms, in those cases in which

there are controversies between those and any interested party.”

In accordance with the precepts transcribed, for the purpose of setting the amount of the sanction of

fine to be imposed on B.B.B. with NIF ***NIF.1, as responsible for an infraction

typified in article 83.5.a) of the GDPR, are considered concurrent in the present

case, as aggravating circumstances, the following factors:

The intentionality or negligence in the infraction, since given the activity

□

of the claimant, greater care is required in the treatment of the data

(83.2.b) GDPR)

Therefore, in accordance with the applicable legislation and assessed the criteria of

graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

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FIRST: IMPOSE B.B.B., with NIF ***NIF.1, for a violation of article 6 of the

GDPR, typified in article 83.5 of the GDPR, a fine of €2,000 (two thousand euros).

SECOND: NOTIFY this resolution to B.B.B..

THIRD: Warn the penalized person that they must make the imposed sanction effective

Once this resolution is enforceable, in accordance with the provisions of Article

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment period

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, by means of its income, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, open in the name of the Agency

Spanish Data Protection Agency at the bank CAIXABANK, S.A.. In the event

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following or immediately following business month, and if

between the 16th and the last day of each month, both inclusive, the payment term

It will be until the 5th of the second following or immediately following business month.

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 reversal before the

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

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

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

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

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

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided for in article 46.1 of the

referred Law.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica->

web/], or through any of the other registries provided for in art. 16.4 of the
aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the
documentation proving the effective filing of the contentious appeal-
administrative. If the Agency was not aware of the filing of the appeal
contentious-administrative proceedings within a period of two months from the day following the
Notification of this resolution would terminate the precautionary suspension.

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